TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 33

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

RAYMOND I. BASHFORD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 22, 1937

CERTIORARI GRANTED MAY 24, 1937

SUPREME COURT OF THE UNITED STATES

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RECORD

IN THE
UNITED STATES CIRCUIT COURT
OF APPEALS
For the Third Circuit

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

RAYMOND I. BASHFORD,
Respondent.

On Petition to Review the Decision of the United States Board of Tax Appeals

DOCKET ENTRIES

1933	
Apr. 27:	Petition received and filed. Taxpayer notified. (Fee paid)
Apr. 28:	Copy of petition served on General Counsel.
Jun. 22:	Answer filed by General Counsel.
Jul. 5:	Copy of answer served on taxpayer.

1934

Aug. 25: Hearing set Nov. 5, 1934.

Sep. 15: Motion for continuance to Nov. 22, 1934 filed by taxpayer. 9/17/34 granted.

Nov. 2: Motion for continuance filed by taxpayer.

Nov. 2: Notice of the appearance of Stanley Suydam, counsel for taxpayer, filed.

Nov. 6: Hearing set Nov. 7, 1934 on motion.

Nov. 6: Copy of notice of hearing date and motion served on General Counsel.

Nov. 7: Hearing had before Mr. Arundell on motion to continue—denied.

Nov. 7: Order denying motion for continuance and proceeding will remain on the Day Calendar of 11/22/34 for hearing on merits entered.

Nov. 14: Notice to send future notices to Stanley Suydam filed by Walter A. Cooper.

Nov. 20: Notice of the appearance of Walter G. Moyle, counsel for taxpayer, filed.

Nov. 20: Motion for continuance to 12/10/34 filed by taxpayer. Granted.

Dec. 7: Notice of the appearance of Earl B. Breeding, counsel for taxpayer, filed.

Dec. 10: Hearing had before Mr. Smith on merits —submitted. Dockets 71565 and 71846 consolidated for hearing. Stipulation of facts filed. Petitioner's brief due 2/10/35 —reply 3/15/35. Respondent's brief due 3/1/35.

Dec. 19: Transcript of hearing of Dec. 10, 1935 filed.

1935

Jan. 23: Motion to amend petition to conform to

the proof filed by taxpayer. 1/24/35 granted.

Feb. 4: Motion to extend time for one month to file all briefs filed by taxpayer.

Feb. 4: Motion for leave to file stipulation to correct transcript of testimony filed by taxpayer. 2/5/35 granted.

Feb. 4: Stipulation of correction lodged.

Mar. 5: Motion for extension of one month for briefs granted.

Mar. 9: Brief filed by taxpayer. 3/11/35 copy served on General Counsel.

Mar. 23: Brief filed by General Counsel.

Mar. 28: Motion for extension to 4/17/35 to file reply brief filed by taxpayer. 3/28/35 granted.

Apr. 9: Notice to send future notices to Walter G. Moyle filed by Stanley Suydam.

Apr. 15: Motion for extension to May 2, 1935 to file reply brief filed by taxpayer. 4/15/35 granted.

May 1: Reply brief filed by taxpayer. 5/1/35 copy served on General Counsel.

Sep. 10: Opinion rendered—Charles P. Smith, Division 5. Judgment will be entered under Rule 50.

Oct. 2: Notice of settlement filed by General Counsel.

Oct. 4: Hearing set Oct. 23, 1935 on settlement.

Oct. 10: Consent to settlement filed by taxpayer.

Oct. 14: Decision entered—Charles P. Smith, Division 5.

1936

Jan. 6: Petition for review by U. S. Circuit Court

of Appeals, 3rd Circuit, with assignments of error filed by General Counsel.

Jan. 30: Proofs of service filed by General Counsel (2).

Feb. 24: Motion for extension to March 25, 1936 to settle and transmit record filed by General Counsel.

Feb. 24: Order enlarging time to 3/25/36 for preparation of evidence and delivery of record entered.

Mar. 20: Motion for extension of time from March 25, 1936 to May 25, 1936 to settle and transmit record filed by General Counsel.

Mar. 20: Order enlarging time to May 25, 1936 for preparation of evidence and delivery of record entered.

Apr. 21: Statement of evidence lodged.

Apr. 21: Notice of lodgment of statement with hearing notice 5/6/36 filed—proof of service thereon.

Apr. 21: Praecipe filed with proof of service thereon.

Apr. 29: Notice of objections and proposed amendments to statement of evidence filed by taxpayer—proof of service thereon.

May 6: Hearing had before Mr. Sternhagen on approval of statement of evidence—continued one week.

May 6: Order of continuance to May 13, 1936 for hearing on approval of statement of evidence entered.

May 12: Agreed statement of evidence approved and ordered filed.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, IT:AR:B3 CEO-60D, dated March 1, 1933, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual residing at 260 South Broad Street, Philadelphia, Pennsylvania.

2. The notice of deficiency, a copy of which is attached and marked Exhibit "A", was mailed to the petitioner on March 1, 1933.

3. The taxes in controversy are income taxes for the calendar year 1930 and for thirty-five thousand, nine hundred forty-one dollars and sixty-three cents ($35,941.63).

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The respondent erred in increasing, in the amount of seven hundred ($700) dollars, the amount reported as cash received upon the exchange by the petitioner of twenty-five hundred twenty-one (2,521) shares of Peerless Explosives Stock for cash and stocks in the Atlas Powder Company and Peerless-Union Explosives Company.

(b) The respondent erred in placing a value of one hundred ($100) dollars per share on six hundred twenty-five (625) shares of Atlas Powder Com-

pany preferred stock received by petitioner in exchange for the aforementioned Peerless Explosives stock.

(c) The respondent erred in placing a value of sixty-six dollars and sixty-six and two-thirds cents ($66.66-2/3) on thirteen hundred forty-four (1,344) shares of Atlas Powder Company common stock received by petitioner in aforementioned exchange of Peerless Explosives stock.

(d) The respondent erred in including in taxable income the value of six hundred twenty-five (625) shares of Atlas Powder Company preferred stock, received by petitioner in exchange of Peerless Explosives stock owned by petitioner.

(e) The respondent erred in including in taxable income the value of thirteen hundred forty-four (1,344) shares of Atlas Powder Company common stock, received by petitioner in exchange of Peerless Explosives stock owned by petitioner.

(f) Respondent erred in failing to determine the tax on the taxable profit realized through the said exchanges at capital net gain rates as provided in section 101 of the Revenue Act of 1928.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

A1. The petitioner received the amount of twenty-five thousand, three hundred six dollars and sixty-seven cents ($25,306.67) in cash upon exchange of twenty-five hundred twenty-one (2,521) shares of Peerless Explosives stock.

A2. Respondent, without explanation, has increased the aforementioned amount to twenty-six thousand, six dollars and sixty-seven cents ($26,006.67), thus increasing taxable income reported by seven hundred dollars ($700.00).

B1. The respondent arbitrarily placed a value of $100.00 per share on Atlas Powder Company preferred stock whereas petitioner alleges that a substantially lower price, not in excess of $90.00 per share, reflects the "fair market value" at date of exchange.

C1. The respondent arbitrarily placed a value of $66.66-2/3 per share on Atlas Powder Company common stock whereas petitioner alleges that a substantially lower price, not in excess of $60.00 per share, reflects the "fair market value" at date of exchange.

D & E1. The exchange of Peerless Explosives stock by petitioner was made in pursuance of an agreement entered into on October 7, 1930.

2. The reorganization of the Peerless Explosives Company involved four parties or groups of parties, to wit:

Group 1—The Peerless Explosives Company, its subsidiary, the Black Diamond Powder Company and its stockholders.

Group 2—The Union Explosives Company and its stockholders.

Group 3—Peerless-Union Explosives Corporation (a subsidiary of Atlas Powder Company) organized pursuant to the plan of reorganization.

Group 4—The Atlas Powder Company.

3. Pursuant to, and simultaneously on the same day, October 7, 1930, the plan of reorganization was consummated and Peerless-Union Explosives Corporation acquired over 99% of all classes of the stock of Peerless Explosives Company, Black Diamond Powder Company and Union Explosives Company.

4. Peerless Explosives Company issued all of its outstanding preferred stock to Atlas Powder Company and its common stock to both Atlas Powder Company and the stockholders of Peerless and Union.

5. Atlas Powder Company delivered directly to the stockholders of Peerless Explosives Company and of Union Explosives Company certain shares of its preferred and common stock and to both the said stockholders and to Peerless-Union Explosives Company cash.

6. Atlas Powder Company received additional common and all of the preferred stock of Peerless-Union.

7. The Stockholders of Peerless and of Union received common stock of Peerless-Union, and preferred and common stock of Atlas Powder Company and cash.

8. The shares held by the stockholders in favor of and contracting to the reorganization plan were as follows:

	Total Outstanding Shares	Shares held by Contracting Parties
Peerless Explosives Company— Preferred Stock	17,672	16,128
Peerless Explosives Company— Common Stock	14,890	14,288
Union Explosives Company— Preferred Stock	3,367½	3,367½
Union Explosives Company— Common Stock	4,044	4,044

9. The parties to the reorganization plan were, according to the plan of reorganization, entitled to receive Peerless-Union stock as follows:

Preferred Stock:

	Shares	Percentage
Atlas Powder Company	21,732	100%

Common Stock:

Atlas Powder Company	32,198	54.34+
Assenting stockholders of Predecessor Companies	27,054-54/100	45.65+
	59,252-54/100	100%

F1. The respondent placed the amount of taxable profit as determined by him in ordinary taxable income brackets of tax computation.

2. The petitioner owned and held the Peerless Explosives stock, exchanged pursuant to the plan of reorganization, since 1922, thereby conclusively establishing the stock as a Capital Asset and subject to only 12½% tax at his election to include income from sale of it in such taxable bracket.

WHEREFORE, the petitioner prays that this Board may hear the proceeding and determine this appeal and grant relief from the deficiency as asserted by the respondent and find that the petitioner was correct in returning twenty-five thousand, three hundred six dollars and sixty-seven cents ($25,306.67) as income, from exchange of Peerless Explosives stock, in 1930; that the respondent erred in placing a value of $100 per share on Atlas Powder Company Preferred Stock as of date of exchange;

that the respondent erred in placing a value of $66.66-2/3 per share on Atlas Powder Company Common Stock as of date of exchange; that the respondent erred in failing to exclude from taxable income the value of the Atlas Powder Company Preferred and Common Stocks; that respondent erred in determining the tax on the gain on the said exchange at ordinary income and surtax rates; and that the Board may give and grant such other and further relief as the Board may deem fit and proper.

WALTER A. COOPER,
Counsel for the Petitioner,
120 Broadway, New York,
N. Y.

State of Delaware,
County of New Castle, ss:

RAYMOND I. BASHFORD, being duly sworn, says that he is the petitioner named in the foregoing petition, and as such is duly authorized to verify the foregoing petition and is familiar with the statements therein contained and that the facts therein stated are true.

RAYMOND I. BASHFORD.

Subscribed to before me this 26th day of April, 1933.

P. W. PARVIS,
Notary Public.

EXHIBIT "A"

TREASURY DEPARTMENT

Washington

Mar. 1, 1933

Mr. Raymond I. Bashford,
260 South Broad Street,
Philadelphia, Pennsylvania.

Sir:

You are advised that the determination of your tax liability for the year 1930 discloses a deficiency of $35,941.63, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the inclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this form will expedite the closing of your return by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the inclosed form, or on the date assessment is made, whichever is earlier; WHEREAS IF THIS FORM

IS NOT FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,
Commissioner.

(Signed) By W. T. SHERWOOD
Acting Deputy Commissioner.

Inclosures:
Statement.
Form 870

STATEMENT

IT:AR:B-3
CEO-60D

In re: Mr. Raymond I. Bashford,
260 South Broad Street,
Philadelphia, Pennsylvania.

Income Tax Liability

Year	Income Tax Liability	Income Tax Assessed	Deficiency
1930	$38,974.68	$3,033.05	$35,941.63

The records of this office indicate that during the year 1930, you exchanged certain shares of stock of the Peerless Explosives Company for cash and stock in the Peerless-Union Explosives Company. You also received 625 shares of preferred stock of the Atlas Powder Company valued at $100.00 per share and 1,344 shares of common stock of the same company having a value of $66 2/3 per share. Under the provisions of section 112(c) (1) of the Revenue Act of 1928, the amount of cash received as well as

the value of the Atlas Powder Company stock is taxable income. Your income tax liability has accordingly been recomputed as follows:

Net income reported on return		$ 38,816.29
Profit on exchange of stock		
Cash	$ 26,006.67	
625 shares preferred stock Atlas Powder Company at $100.00 per share	62,500.00	
1,344 shares common stock Atlas Powder Company at $66 2/3 per share	89,600.00	
	$178,106.67	
Profit on above reported on your return	25,306.67	
Profit not reported		152,800.00
Net income as adjusted		$191,616.29

Mr. Raymond I. Bashford — Statement

Brought forward		$191.616.29
Less:		
Dividends received	$ 1,452.89	
Personal exemption and credit for dependents	5,100.00	6,552.89
Subject to normal tax		$185,063.40
Normal tax at 1 ½ per cent on $4,000.00		$ 60.00
Normal tax at 3 per cent on $4,000.00		120.00

Normal tax at 5 per cent on $177,063.40	8,853.17
Surtax on $191,616.29	29,983.26
Total	$ 39,016.43
Less:	
Earned income credit	41.75
Income tax liability	$ 38,974.68
Previously assessed	3,033.05
Deficiency	$ 35,941.63

Computation of Earned Income Credit

Earned net income	$ 12,000.00
Less:	
Personal exemption and credit for dependents	5,100.00
Income subject to normal tax	$ 6,900.00
Normal tax at 1½ per cent on $4,000.00	$ 60.00
Normal tax at 3 per cent on $2,900.00	87.00
Surtax on $12,000.00	20.00
Total Tax	$ 167.00
Credit of 25 per cent of above	$ 41.75

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for the year 1930, the Income Tax Unit will be unable to afford you an opportunity to discuss your case before mailing formal notice of its determination as provided by section 272(a) of the

Revenue Act of 1928. It is, therefore, necessary at this time to issue this formal notice of deficiency.

ANSWER

Comes now the respondent by his attorney, E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue, and in answer to the petition of the petitioner, admits, denies and alleges as follows:

1, 2 and 3. Admits the allegations contained in paragraphs one, two and three of the petition.

4. (a) to (f) inc. Denies that the respondent committed errors as alleged in sub-paragraphs (a) to (f) inc. of paragraph four of the petition.

5. A1. Alleges that the petitioner received $26,006.67 in cash upon exchange of 2,521 shares of Peerless Explosives stock, instead of only $25,306.67 as alleged in paragraph five A1. of the petition.

5. A2. Admits the allegations contained in paragraph five A2. of the petition.

5. B1. Admits that the respondent placed a value of $100.00 per share on Atlas Powder Company preferred stock, but denies the remaining allegations contained in paragraph five B1. of the petition.

5. C1. Admits that the respondent placed a value of $66.66 2/3 per share on Atlas Powder Company common stock, but denies the remaining al-

legations contained in paragraph five C1. of the petition.

5. D and E1. Admits the allegations contained in paragraph five D and E1. of the petition.

5. D and E2. to 9 inc. Denies each and every allegation contained in sub-paragraphs 2 to 9 inc. of paragraph styled five D and E of the petition, that is contrary to or inconsistent with the determination of the Commissioner as set forth in the notice of deficiency.

5. F1. Admits the allegations contained in paragraph five F1. of the petition.

5. F2. Denies the allegations contained in paragraph five F2. of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore expressly admitted, qualified or denied.

WHEREFORE, it is prayed that the petitioner's appeal be denied and the Commissioner's determination of deficiency be approved.

(Sgd) E. BARRETT PRETTYMAN,
General Counsel,
Bureau of Internal
Revenue.

Of Counsel:

DEWITT M. EVANS,
Special Attorney
Bureau of Internal Revenue.

MOTION TO AMEND PETITION TO CONFORM TO PROOF

Now comes the Petitioner, through his counsel, and respectfully moves this Honorable Board for permission to amend his Petition to conform to the proof in this cause, the hearing of which was held before this Board on December 10, 1934, in the following particulars:

(1). By substituting for the words "twenty-five hundred twenty-one (2521) shares of Peerless Explosives Stock" in Paragraph 4 (a) (1) thereof, the words "Twenty-five hundred thirty-four and forty-eight one hundredths (2534.48) shares of Peerless Explosives Common Stock".

(2). By substituting for the words "twenty-five hundred twenty-one (2521) shares of Peerless Explosives Stock" in Paragraph 5 (a) (1) thereof, the words "twenty-five hundred thirty-four and forty-eight one hundredths (2534.48) shares of Peerless Explosives Common Stock".

(3). By changing the words "Peerless Explosives Company" at the beginning of Paragraph 5 (a) (4) thereof to "Peerless-Union Explosives Corporation".

(4). By striking out from the first line of Paragraph 5 (e) (5), near the bottom of Page 3 thereof, the word "directly" and substitute therefor the following: "through the First National Bank of Ta-

maqua, Pennsylvania, and/or Peerless-Union Explosives Corporation".

(5). By the following change in Paragraph 5 (e) (9), after the words "Common Stock: Atlas Powder Company", to substitute for the figures "32,198" and the percentage opposite thereto of "54.34 (plus)" the following: "32,198 issued in the name of Atlas Powder Company and 5,000 issued in certificates of 2500 each to Messrs. Seligman and Fletcher as nominees for Atlas Powder Company" and the percentage opposite thereto to read "62.77 (plus)".

As grounds for this Motion counsel asserts that these changes conform to the Stipulation introduced in evidence and to the oral testimony given at the hearing on December 10, 1934. Petitioner's counsel moved that these changes, with the exception of the one first mentioned herein, be made at the time of the hearing, as shown on Pages 137 and 138 of the Official Report of the Proceedings. The Board Member at that time suggested that this formal Motion be filed at the time or prior to the filing of Petitioner's Brief.

Respectfully,

WALTER G. MOYLE, (signed)
STANLEY SUYDAM (signed)
Counsel for Petitioner.

Dated
January 23, 1935.

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the respective parties hereto that the following are some of the facts pertinent to the issues herein involved; that this Board may predicate its decision herein upon these facts and that the parties hereto, by their respective attorneys, respectively reserve the right to introduce such further evidence and adduce such further testimony as may be necessary and pertinent to a full presentation of the issues herein to the Honorable Board and not inconsistent with the facts herein stipulated.

I.

On and prior to October 7, 1930 the Peerless Explosives Company was a corporation organized and existing under and by virtue of the laws of the State of Delaware. On and prior to October 7, 1930 there were issued and outstanding 17,672 shares of Preferred Stock of Peerless Explosives Company and 14,890 shares of Common Stock of Peerless Explosives Company. The Preferred Stock had a par value of $25.00 per share and the Common Stock was without nominal or par value.

II.

On and prior to October 7, 1930 the Union Explosives Company was a corporation organized and existing under and by virtue of the laws of the State of West Virginia. On and prior to October 7, 1930

there were issued and outstanding 3,367½ shares of preferred stock of the Union Explosives Company and 4,044 shares of the common stock of the Union Explosives Company. The preferred stock had a par value of $100 per share and the common stock was without nominal or par value.

III.

On and prior to October 7, 1930, the Black Diamond Powder Company was a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania. On and prior to October 7, 1930 there were issued and outstanding 1,584 shares of common stock of the Black Diamond Powder Company, all of which was owned by the Peerless Explosives Company. The Black Diamond Powder Company had no preferred stock issued or outstanding and the common stock had a value of $100.00 per share.

IV.

The business of the Peerless Explosives Company, the Union Explosives Company and the Black Diamond Powder Company was that of manufacturing and selling certain explosives.

V.

On or about the 22nd day of September 1930 the Peerless-Union Explosives Corporation was incorporated under the laws of the State of Delaware.

VI.

On or about October 6, 1930 the authorized capital

stock of the Peerless Union Explosives Corporation was increased from 500 shares of Preferred Stock of the par value of $100 per share and 500 shares of the Common Stock, without nominal or par value, to 50,000 shares of Preferred Stock of the par value of $100.00 per share and 100,000 shares of the Common Stock, without nominal or par value.

VII.

On and prior to October 7, 1930 the Atlas Powder Company was a corporation organized and existing under and by virtue of the laws of the State of Delaware, engaged in the general business of the manufacture of explosives and related products, including components thereof.

On or prior to October 7, 1930 there was issued and outstanding 261,438-3/4 shares of the Common Stock of no par value, including treasury stock and 90,000 shares of the par value of $100.00, including treasury stock.

Referred to in this Stipulation, the outstanding capital issue stock of the Atlas Powder Company was as follows: 261,438-3/4 shares of Common Stock (including treasury stock), 96,318 shares of the Preferred Stock (including treasury stock). The increase of 6,318 shares was entirely of newly issued Preferred Stock. The changes made in the issued and outstanding capital stock of the Atlas Powder Company, as the result of the transactions of October 7, 1930, referred to in this Stipulation, are fully set forth in the Minutes of the Meetings of the Board of Directors of the Atlas Powder Company of October 2, 1930 and December 3, 1930, true copies of which, marked Exhibit "A" and Exhibit

"B" are attached hereto and made a part hereof by reference.

VIII.

On or about the 23rd day of September 1930 the Directors of the Peerless-Union Explosives Corporation met and elected H. K. Seligman President and W. E. Fletcher a Vice-President and Secretary. On this day the Atlas Powder Company owned all of the issued and outstanding stock of the Peerless-Union Explosives Corporation, the same being 10 shares of preferred stock and 10 shares of the common stock for which the Atlas Powder Company paid the sum of $1,000.00 in full payment for said 10 shares of preferred stock and $1.00 in full payment for said 10 shares of common stock.

IX.

On the 2nd day of October 1930 the Directors of the Atlas Powder Company held a Special Meeting at the offices of the Company at Wilmington, Delaware. Attached hereto and made a part hereof by reference, marked Exhibit "A" is a true copy of the Minutes of said Meeting. Pursuant to the authorization as provided in said Minutes the Atlas Powder Company, on October 7, 1930, paid to the Peerless-Union Explosives Corporation the sum of $959,559.25 and on the same date the Atlas Powder Company delivered to the Peerless-Union Explosives Corporation, in the form of "temporary receipts" dated October 7, 1930, 6,318 shares of its Preferred Stock, and 8,712½ shares of its Common Stock issued in the names of the stockholders of Peerless Explosives Company and Union Explo-

sives Company, to whom they were thereupon delivered by the Peerless-Union Explosives Corporation, as set forth in Exhibits "O" and "P" attached hereto. There were issued and delivered to the Atlas Powder Company on October 7, 1930 21,722 shares of the preferred stock and 32,188 shares of the common stock of the Peerless-Union Explosives Corporation, thus at the close of October 7, 1930 Atlas Powder Company was the owner of record of 21,732 and 32,198 shares of the preferred and common stock, respectively, of the Peerless-Union Explosives Corporation.

X.

Raymond I. Bashford, E. Frost and Edward R. Day on the one hand and H. K. Seligman and W. E. Fletcher on the other entered into an Agreement, a true copy of which is attached hereto, marked Exhibit "C" and made a part hereof by reference.

XI.

J. Edgar Long on the one hand and H. K. Seligman and W. E. Fletcher on the other entered into an Agreement, a true copy of which is attached hereto, marked Exhibit "D" and made a part hereof by reference.

XII.

H. K. Seligman and W. E. Fletcher on the one hand and the Peerless-Union Explosives Corporation on the other entered into an Agreement. Attached hereto, marked Exhibit "E" and made a part hereof by reference is a true copy of said Agreement.

XIII.

An agreement was entered into between Edward R. Day, "Party of the first part"; Peerless-Union Explosives Corporation, "Party of the second part" and the Atlas Powder Company, "Party of the third part". A true copy of said Agreement is attached hereto, marked Exhibit "F" and made a part hereof by reference.

XIV.

Raymond I. Bashford, "Party of the first part", Peerless-Union Explosives Corporation, "Party of the second part" and the Atlas Powder Company, "Party of the third part" entered into an Agreement. A true copy of said Agreement is attached hereto, marked Exhibit "G" and made a part hereof by reference.

XV.

Eugene Frost, "Party of the first part", Peerless-Union Explosives Corporation, "Party of the second part" and the Atlas Powder Company, "Party of the third part" entered into an Agreement. Attached hereto, marked Exhibit "H" and made a part hereof by reference is a true copy of said Agreement.

XVI.

The Peerless-Union Explosives Corporation addressed a letter to Eugene Frost. Attached hereto, marked Exhibit "J" and made a part hereof by reference is a true copy of said letter.

XVII.

On October 7, 1930 the Peerless Explosives Company, by Bill of Sale, granted, bargained, sold, assigned, transferred and set over, in consideration of the sum of $1,036,800.00 represented by the note of the Peerless-Union Explosives Corporation in that amount, to Peerless-Union Explosives Corporation, subject to its liabilities, all of its property and assets, including all of the outstanding stock of the Black Diamond Powder Company and the latter Company thereupon, by Bill of Sale, granted, bargained, sold, assigned, transferred and set over to Peerless-Union Explosives Corporation, subject to its liabilities, all of its property and assets. This sale was approved by the holders of 92% and 97% respectively, of the outstanding preferred and common stock of the Peerless Explosives Company. On December 16, 1930 the Black Diamond Powder Company was dissolved.

XVIII.

On or about October 7, 1930 the Union Explosives Company, by Bill of Sale, granted, bargained, sold, assigned, transferred and set over, in consideration of the sum of $871,750.00, represented by a note of Peerless-Union Explosives Corporation in that amount, to the Peerless-Union Explosives Corporation, subject to its liabilities, all of its property and assets and on the 25th of November, 1930 the Union Explosives Company was dissolved.

XIX.

On or about the 5th day of January 1931 the Directors of the Peerless Explosives Company met and

resolved that the Corporation should be dissolved. Attached hereto, marked Exhibit "K" and made a part hereof by reference is a true copy of the Minutes of the Directors Meeting referred to. There was delivered to Montgomery and McCracken, the Attorneys who were performing legal services in connection with the transactions herein described, for filing under the laws of the State of Delaware, the original Certificate of Dissolution (a true copy of which, marked Exhibit "L" is attached hereto and made a part hereof by reference) duly executed by H. K. Seligman, President and W. E. Fletcher, Secretary and Treasurer of the Company attached to which was the consent to the dissolution signed by the Peerless-Union Explosives Corporation and its nominees, representing the holders of record of all of the outstanding capital stock of the Company. Robert C. Walker, a partner of the firm of Montgomery and McCracken, who was handling the matter for said firm, would testify, if personally present at the hearing before this Board that the failure of his firm to file the Certificate of Dissolution at the time it was delivered to him for filing by the Peerless Explosives Company until December 31, 1931 was due to an oversight in his office. The Peerless Explosives Company was dissolved on December 31, 1931.

XX.

On October 7, 1930 Raymond I. Bashford, the Petitioner herein, owned 2,541 shares of the Common Stock of the Peerless Explosives Company and 28 shares of the Preferred Stock of the Peerless Explosives Company. Said Raymond I. Bashford ac-

tually exchanged on October 7, 1930, 2534.38 shares of the Common Stock of the Peerless Explosives Company for $25,306.67 in cash; 625 shares of the Preferred Stock of Atlas Powder Company; 1,344 shares of the Common Stock of Atlas Powder Company and 2,720.08 shares of Common Stock of Peerless-Union Explosives Corporation. There is attached hereto, made a part hereof by reference and marked Exhibit "M", a true copy of the receipt of Raymond I. Bashford dated October 7, 1930 for the cash and securities referred to herein.

The remaining 6.62 shares of Common Stock of the Peerless Explosives Company owned by Bashford on October 7, 1930 and not included in said exchange were transferred by him to certain other stockholders of the Peerless Explosives Company, included in the majority group who exchanged 8,500 shares of Peerless Explosives Company stock on October 7, 1930, without consideration, to Petitioner and as a matter of convenience in affording all stockholders within the group a uniform basis of exchange.

XXI.

On October 7, 1930 Messrs. Bashford, Frost and Day, pursuant to their Agreements, copies of which are attached hereto, marked Exhibit "C" and Exhibit "E" respectively, delivered, caused to be delivered, transferred or caused to be transferred 8,500 shares of the Common Stock of the Peerless Explosives Company to the Peerless-Union Explosives Corporation. Attached hereto, marked Exhibit "N" and made a part hereof by reference is a schedule which correctly shows the following:

The names of the record holders of said 8500 shares of the Common Stock of Peerless Explosives Company; the number of shares owned by each of said stockholders immediately prior to the exchanges of October 7, 1930 involved herein; and a statement of the number of shares actually exchanged by each of said stockholders on which settlements were based as provided for in said Agreements marked Exhibit "C" and Exhibit "E".

Immediately prior to said exchanges Petitioner and several other stockholders within said group gave certain of their shares to others in the group, without consideration. These changes are reflected in the differences between the column showing the record ownership of each stockholder and the column showing the amount of stock each stockholder actually exchanged and which formed a basis of the settlement.

XXII.

On October 7, 1930 in exchange for the number of shares of the Common Stock of Peerless Explosives Corporation shown opposite the names of the individuals listed as the record holders of the Common Stock of the Peerless Explosives Corporation, Exhibit "N" there was issued and delivered to such individuals, or to their order, the number of dollars, the number of shares of the Preferred Stock of the Atlas Powder Company, the number of shares of the Common Stock of the Atlas Powder Company and the number of shares of the Common Stock of the Peerless-Union Explosives Corporation set opposite their names in the schedule which is attached hereto, marked Exhibit "O" and made a part here-

of by reference. Each of the stockholders referred to herein gave to Peerless-Union Explosives Corporation a receipt for cash and securities received by them similar in form to that (Exhibit "M") given by Raymond I. Bashford, Petitioner herein.

XXIII.

On October 7, 1930 H. K. Seligman and W. E. Fletcher delivered to the Peerless-Union Explosives Corporation 16,128 shares of the Preferred Stock of the Peerless Explosives Company and 14,288 shares of the Common Stock of Peerless Explosives Company, 3367½ shares of the Preferred Stock of the Union Explosives Company, 4044 shares of the Common Stock of Union Explosives Company, all such certificates being duly endorsed for transfer, at the same time authorizing Peerless-Union Explosives Corporation to issue and deliver to the First National Bank of Tamaqua the sum of $507,150 in cash and certificates for 8,685-54/100 shares of the Common Stock of the Peerless-Union Explosives Corporation, and to deliver and distribute the sum of $125,000 in cash and temporary receipts for 6,318 shares of the Preferred Stock and 8712½ shares of the Common Stock of Atlas Powder Company and certificates for 23,510.25 shares of the Common Stock of Peerless-Union Explosives Corporation, to the stockholders of Peerless Explosives Company and the Union Explosives Company, as set forth in Exhibits "O" and "P" attached hereto.

XXIV.

Pursuant to the direction of Messrs. Seligman and

Fletcher referred to in the paragraph last preceding the Peerless-Union Explosives Corporation delivered to the First National Bank of Tamaqua the sum of $507,150 in cash and certificates for 8,685-54/100 shares of the Common Stock of the Peerless-Union Explosives Corporation.

XXV.

Pursuant to the authorization and direction referred to in Paragraph XXIII hereof, ante, the First National Bank of Tamaqua delivered to the record holders of the Common and Preferred Stock of the Peerless Explosives Company, comprising the minority who subscribed to the plan of exchange of Peerless Stock for cash and Common Stock of Peerless-Union Explosives Corporation the sum of $403,200 and 6447.79 shares of the Common Stock of the Peerless-Union Explosives Corporation in exchange for 16,128 shares of the Preferred Stock of the Peerless Explosives Company and 5783 shares of the Common Stock of Peerless Explosives Company.

XXVI.

Pursuant to the direction and authority referred to in Paragraph XXIII ante, the First National Bank of Tamaqua delivered to the individuals, the record holders of the number of shares of Preferred and Common Stock of the Union Explosives Company set opposite their names in Exhibit "P", attached hereto and made a part hereof by reference, the number of dollars and the number of shares of the Common Stock of Peerless-Union Explosives Corporation set opposite their names in said Exhibit

"P", thus delivering the total sum of $103,950.00 and 2096.50 shares of the Common Stock of the Peerless-Union Explosives Corporation in exchange for 937 shares of the Preferred Stock of Union Explosives Company and 1128 shares of the Common Stock of the Union Explosives Company.

XXVII.

Pursuant to the authorization and direction referred to in Paragraph XXIII ante, the Peerless-Union Explosives Corporation delivered to J. Edgar Long 9,510.25 shares of the Common Stock of Peerless-Union Explosives Corporation, 5,000 shares of the Common Stock of the Atlas Powder Company and 4,093 shares of the Preferred Stock of the Atlas Powder Company in exchange for 2,430½ shares of the Preferred Stock of the Union Explosives Corporation and 2,916 shares of the Common Stock of the Union Explosives Corporation.

XXVIII.

Subsequent to October 7, 1930, pursuant to the authorization of the Board of Directors of the Peerless-Union Explosives Corporation, that Corporation delivered to the First National Bank of Tamaqua, the sum of $38,600 in cash, this sum to be used in the acquisition of 1544 shares of the Preferred Stock of the Peerless Explosives Corporation and 602 shares of the Common Stock of the Peerless Explosives Company, these shares representing all of the issued capital stock of the Peerless Explosives Company remaining outstanding after October 7, 1930.

On or about October 15, 1930 the Peerless-Union

Explosives Corporation delivered to the First National Bank of Tamaqua the sum of $1,455, such sum to be used in the same manner and for the same purposes as the sum of $38,600, previously hereinbefore referred to.

XXIX.

Between October 15, 1930 and December 31, 1930 the First National Bank of Tamaqua, pursuant to the direction of the Peerless-Union Explosives Corporation, paid to the owners of the 1544 shares of the Preferred Stock of the Peerless-Union Explosives Corporation and the owners of the 602 shares of the Common Stock of the Peerless Explosives Company (comprising 26 individual stockholders in all), the total sum of $39,955.00, (the sum of $100.00 being returned by the First National Bank of Tamaqua to the Peerless-Union Explosives Corporation) and at the same time delivered to the owners of the 1,544 shares of the Preferred Stock of the Peerless Explosives Company and the owners of the 602 shares of the Common Stock of the Peerless Explosives Company 301 shares of the common stock of the Peerless-Union Explosives Corporation. Of the said 26 holders of the common and preferred stock of the Peerless Explosives Company, two received all cash.

XXX.

On January 5, 1931 the Board of Directors of the Peerless Explosives Company authorized, directed and empowered its proper officials to mark cancelled the note of Peerless-Union Explosives Corporation dated October 7, 1930, drawn to the order

of the Peerless Explosives Company in the sum of $1,036,800 and deliver the same to Peerless-Union Explosives Corporation in exchange for certificates for all of the outstanding preferred and common stock of Peerless Explosives Company duly endorsed for transfer.

XXXI.

On October 21, 1930 the Board of Directors of the Union Explosives Company authorized, instructed and directed the proper officials of the Company to mark cancelled the note of the Peerless-Union Explosives Corporation to the order of the Union Explosives Company in the sum of $871,750.00 and to deliver the same to Peerless-Union Explosives Corporation in exchange for certificates for all of the outstanding preferred and common stock of Union Explosives Company duly endorsed for transfer.

XXXII.

Subsequent to January 5, 1931 the note of the Peerless-Union Explosives Corporation in the sum of $1,036,800 was surrendered by the Peerless Explosives Company and duly cancelled.

XXXIII.

Subsequent to October 21, 1930 the note of the Peerless-Union Explosives Corporation in the sum of $871,750.00 was surrendered by the Union Explosives Company and duly cancelled.

XXXIV.

At the close of October 7, 1930 there were issued

and outstanding 21,732 shares of Preferred Stock of Peerless Union Explosives Corporation, all of which were owned by the Atlas Powder Company, and 59,343.79 shares of the Common Stock of the Peerless-Union Explosives Corporation. Of said 59,343.79 shares of the Common Stock of the Peerless-Union Explosives Corporation 32,198 shares were issued to the Atlas Powder Company and 27,145.79 shares of the Common Stock of the Peerless-Union Explosives Corporation to the former stockholders of Peerless Explosives Company and Union Explosives Company. Not included in the above was a certificate of 2500 shares of the Common Stock of Peerless-Union Explosives Corporation issued to H. K. Seligman and a certificate for a like amount of Peerless Union Explosives Corporation Common Stock issued to W. E. Fletcher, which certificates were dated October 7, 1930.

XXXV.

Between October 7 and December 31, 1930 there was issued 673.27 additional shares of the Common Stock of Peerless-Union Explosives Corporation in connection with the acquisition of 602 shares of the Common Stock and 1544 shares of the Preferred Stock of the Peerless Explosives Company.

XXXVI.

Attached hereto, marked Exhibit "Q" and made a part hereof by reference is a true copy of a Specimen Certificate of the Cumulative Preferred Stock of Peerless-Union Explosives Corporation.

XXXVII.

Exhibit "R" is the original income tax return filed by Petitioner for the year 1930.

XXXVIII.

Respondent overstated Petitioner's taxable income in the amount of $700.00, representing the cash received from the disposition of 28 shares of Preferred Stock of the Peerless Explosives Company which taxpayer reported in Schedule "C" of his return.

XXXIX.

Exhibit "S" is the correct statement of the sales of Atlas Powder Company Common and Preferred Stock on the New York Stock Exchange during the period September 6, 1930 to November 7, 1930, inclusive, showing the number of shares traded in each day and the high, low and closing prices thereof and the bid and asked price.

XL.

Of the 2541 shares of the Common Stock of the Peerless Explosives Company owned by Petitioner on October 7, 1930, he acquired 2500 in 1922 for services rendered and formulas conveyed to the Peerless Explosives Company. 25 shares were acquired through miscellaneous odd lot purchases between 1922 and 1927 and the balance, or 16 shares, were acquired by purchase on July 30, 1930.

XLI.

Petitioner was not a dealer in securities and the

stock was not held by him primarily for sale in the course of his trade or business.

XLII.

Petitioner in returning his taxable income for the year 1930 made no capital deductions and claimed no capital losses.

XLIII.

Of the 2,541 shares of Peerless-Union Explosives Corporation Common Stock owned by Petitioner prior to October 7, 1930 he actually exchanged 2534.38 shares of said stock in consideration for 1344 shares of Common Stock of Atlas Powder Company and 625 shares of Preferred Stock of Atlas Powder Company, 2,720.08 shares of Common Stock of Peerless-Union Explosives Corporation and $25,306.67 in cash. The remaining 6.62 shares of Peerless Explosives Company Common Stock were transferred by Petitioner as set forth in Paragraph XXI herein.

XLIV.

Exhibit "T" attached hereto and made a part hereof by reference consists of photostatic copies of eight original journal entry vouchers of Peerless-Union Explosives Corporation showing how the various steps in the acquisition by said Corporation of the assets of the Peerless Explosives Company, Black Diamond Powder Company and the Union Explosives Company were recorded on the books of original entry of the Peerless Union Explosives Corporation.

XLV.

On October 7, 1930 H. K. Seligman and W. E. Fletcher were elected President and Secretary and Treasurer, respectively, of the Peerless Explosives Company.

XLVI.

On October 7, 1930 H. K. Seligman and W. E. Fletcher were elected President and Secretary and Treasurer, respectively, of the Union Explosives Company.

WALTER G. MOYLE,
STANLEY SUYDAM,
Counsel for Petitioner.

ROBERT H. JACKSON,
Assistant General Counsel,
Bureau of Internal
Revenue.

EXHIBIT "A"

SPECIAL DIRECTORS' MEETING

Minutes of Special Meeting of the Board of Directors of Atlas Powder Company held at the offices of the Company, Room 734, Delaware Trust Building, Wilmington, Delaware, on Thursday, October 2, 1930, at 3:00 o'clock in the afternoon, pursuant to call by the President and Waiver of Notice signed by all the Directors, hereto attached, the purpose of said meeting being to consider the invest-

ment in the Capital Stock of Peerless-Union Explosives Corporation and such other business as may properly come before the meeting.

Present:

Leland Lyon

Isaac Fogg	Leonard Richards, Jr.
C. F. Backus	E. W. Moorhouse
John W. Mathews	J. F. VanLear
E. W. Maynard	Charles Warner

Absent:

Ernest duPont
W. T. Penniman

Mr. Leland Lyon, President of the Company, presided at the meeting with Mr. Isaac Fogg, Secretary, present and acting.

Upon motion, reading of the minutes of the previous meeting of the Board of Directors was waived.

The secretary reported that after informal conferences with various officers and members of the Board of Directors, the executive officers of the Company, under the terms and conditions of a certain plan of reorganization, have caused the formation, under the laws of Delaware, of a subsidiary corporation under the name Peerless-Union Explosives Corporation, for the carrying on of the lawful business of this Company, and extensions thereof, through the acquisition of all the assets of the Peerless Explosives Company, a Corporation of the State of Delaware, all the assets of Black Diamond Powder Company, a Corporation of the State of Pennsylvania, and all the assets of the Union Explosives Company, a Corporation of the State of

West Virginia, subject to the outstanding liabilities of said corporations, and that all of the issued and outstanding stock of said subsidiary is now held by Atlas Powder Company.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

> RESOLVED, that the action of the executive officers of the Company in causing the formation, under the terms and conditions of a certain plan of reorganization, of a subsidiary corporation entitled Peerless-Union Explosives Corporation, for the purpose of carrying on the lawful business of this corporation, and the extensions thereof, through the purchase of all the assets of Peerless Explosives Company, Black Diamond Powder Company and Union Explosives Company, be, and the same is hereby ratified and approved.
>
> FURTHER RESOLVED, that in furtherance of said plan for the carrying on of the business of this Company, and the extensions thereof, this Board approves the acquisition by said Peerless-Union Explosives Corporation of all the assets of Peerless Explosives Company, a Corporation of the State of Delaware, all the assets of Black Diamond Powder Company, a Corporation of the State of Pennsylvania, and all the assets of Union Explosives Company, a Corporation of the State of West Virginia, subject to their existing liabilities and for that purpose thereby authorizes the proper officers of this Company to invest in the capital stock of said Peerless-Union Explosives Corporation up

to an aggregate of 21,732 shares of the 6% Cumulative Preferred Stock of said Company and 32,198 shares of its Common Stock, and in consideration therefor to deliver to Peerless-Union Explosives Corporation, or upon the order of its President and Treasurer, the following:

(a) $960,560.25 in cash.

(b) 6,318 shares of Atlas Preferred stock on the basis of $100.00 per share.

(c) 8,712-1/2 shares of Atlas Common Stock on the basis of $66-2/3 per share.

said Preferred and Common Stock to be represented at time of settlement by temporary receipts.

FURTHER RESOLVED, that Atlas Powder Company, as the holder of all the stock of Peerless-Union Explosives Corporation, now outstanding, hereby consent to the issuance by Peerless-Union Explosives Corporation of said 21,732 shares of 6% Cumulative Preferred Stock and 32,198 shares of Common Stock, and further to the issuance by said Peerless-Union Explosives Corporation of such additional amount of its authorized Common Stock not exceeding, however, 5,500 shares to Harry K. Seligman and W. E. Fletcher, on account of such part of the purchase price payable to them in the course of the acquisition of the shares of Peerless Explosives Company, Black Diamond Powder Company, and Union Explosives Company, as is payable in the stock of said Peerless-Union Explosives Corporation.

FURTHER RESOLVED, that the President

and Treasurer be, and they are hereby authorized and directed to take all other steps necessary to carry this resolution into effect.

The Treasurer advised the Board that Atlas Powder Company owns at this time 4,854 shares of its own Common Stock, and recommended that 4,851-1/4 of said shares be exchanged for a like number of shares of Common Stock of Atlas Powder Company represented by temporary Receipts for Common Stock to be issued under date of October 7, 1930, and that the exchange be bookkeeped upon the basis of the average cost per share of $85.89, stating that after using 4,851-1/4 shares in exchange as above, there would be required to be issued 3,861-1/4 shares of Common Stock, as original issue stock, to complete the exchange of Temporary Receipts then left outstanding. The total issued Common Capital Stock of Atlas Powder Company would then be 265,300 shares.

Upon motion duly made, seconded and unanimously adopted, it was

RESOLVED, that the Treasurer of this Company be, and he is hereby authorized to exchange on or after December 10, 1930, 4,851-1/4 shares of Common Stock of Atlas Powder Company, now owned by Atlas Powder Company, for a like number of shares of Common Stock represented by Temporary Receipts, and to bookkeep the exchange of said shares upon the basis of the average cost per share of $85.89;

FURTHER RESOLVED, that the proper officers of the Company be, and they are hereby

authorized to execute assignments covering the transfer and delivery of 4,851-1/4 shares of Common Stock of Atlas Powder Company, standing in the name of Atlas Powder Company, in order to carry out the provisions of the above resolution.

The Treasurer further advised that in order to provide for sufficient Preferred and Common Stock to complete the exchange of Temporary Receipts left outstanding after giving effect to the exchange of Temporary Receipts of Common Stock as per resolution immediately preceding, authority should be granted to issue, as original issue stock, 6,318 shares of Preferred Stock and 3,861-1/4 shares of Common Stock of Atlas Powder Company. Whereupon the following preamble and resolutions were upon motion, duly seconded, unanimously adopted:

WHEREAS, the amount of additional Preferred and Common Stock of Atlas Powder Company required to provide for the exchange of Temporary Receipts of Preferred and Common Stock outstanding as of November 1st and December 10, 1930, respectively, is 6,318 shares of Preferred Stock and 3,861-1/4 shares of Common Stock, therefore be it

RESOLVED, that in accordance with law and authority of Section 7, Article G, of the Certificate of Amendment of the Certificate of Incorporation of this Company, there be issued an additional amount of 6,318 shares of Preferred Stock and 3,861-1/4 shares of Common Stock if, as and when Temporary Receipts of Preferred and Common Stock, aggregating a like

number of shares are surrendered for exchange for same on and after November 1, 1930, in the case of Preferred Stock and December 10, 1930 in the case of Common Stock;

BE IT FURTHER RESOLVED, that the President or a Vice President and the Treasurer or an Assistant Treasurer, be, and they are hereby authorized to instruct the Stock Transfer Agent of this Company to issue fully paid Preferred and Common Stock certificates of Atlas Powder Company in the amounts of 6,318 shares of Preferred Stock and 3,861-1/4 shares of Common Stock in such names and amounts as may be instructed by them;

FURTHER RESOLVED, that the Stock Transfer Agent of the Company, Empire Trust Company, be, and is hereby authorized and empowered to issue Preferred Capital Stock of Atlas Powder Company up to a total amount of 96,318 shares of the par value of $100.00 each, and Common Capital Stock of Atlas Powder Company up to a total amount of 265,300 shares, without nominal or par value, upon receipt of and pursuant to instructions from the proper officers of Atlas Powder Company;

FURTHER RESOLVED, that Guaranty Trust Company of New York, Registrar, be, and they are hereby authorized and empowered to certify the C pital Stock of Atlas Powder Company up to the following total amounts:

Preferred Capital Stock up to the total amount of 96,318 shares of the par value of $100.00 each;

Common Capital Stock up to the total amount of 265,300 shares without nominal or par value.

The total amount of the authorized Capital Stock of Atlas Powder Company, by provision in its Certificate of Incorporation and Amendments thereof, is 100,000 shares of Preferred Stock of the par value of $100.00 each, a total par value of $10,000,000.00 and 500,000 shares of Common Stock, without nominal or par value. Of such authorized Common Stock 50,000 shares without nominal or par value shall be Non-Voting Common Capital Stock and 450,000 shares shall be Voting Common Capital Stock.

Upon motion, duly made, seconded and unanimously adopted, it was

RESOLVED, that application be made to the New York Stock Exchange for the listing of 6,318 additional shares of Preferred Stock and 3,861-1/4 additional shares of Common Stock of this Corporation, and that Isaac Fogg be designated by the Corporation to appear before the Committee on Stock List of said Exchange, with authority to make such changes in said application, or in any agreements relative thereto as may be necessary to conform with requirements for listing.

Upon motion, the meeting adjourned.

(SIGNED) Isaac Fogg
Secretary

(SIGNED) Leland Lyon

(SIGNED) .....

(SIGNED) John W. Mathews
(SIGNED) E. W. Maynard
(SIGNED) .....
(SIGNED) Leonard Richards, Jr.
(SIGNED) J. F. Van Lear

APPROVED:

.....

(SIGNED) W. T. Penniman

EXHIBIT "B"

REGULAR DIRECTORS' MEETING

Minutes of Regular Meeting of the Board of Directors of Atlas Powder Company, held at the offices of the Company, Room 734, Delaware Trust Building, Wilmington, Delaware, on Wednesday, December 3, 1930, at 3:00 o'clock in the afternoon.

Present:

Leland Lyon

C. F. Backus	E. W. Moorhouse
Ernest duPont	W. T. Penniman
Isaac Fogg	Leonard Richards, Jr.
John W. Mathews	J. F. VanLear
E. W. Maynard	Charles Warner

Mr. Leland Lyon, President of the Company, presided at the meeting with Mr. Isaac Fogg, Secretary, present and acting.

Upon motion, reading of the minutes of the previous meeting of the Board of Directors was waived.

The Secretary stated that there were no items of unfinished business.

NEW BUSINESS

Minutes of Executive Committee meetings of November 7th, 10th, 12th, 20th, 26th and December 3rd were read; and, upon motion, duly made, seconded and unanimously adopted, it was

> RESOLVED, that the Board of Directors hereby approves the action of the Executive Committee in authorizing the following projects:
>
> Project A-3056, Part II, Giant Works, $1,776.09, covering repairs to wharf.
>
> Part I of this Project amounted to $2,484.00, Part II, $1,776.09, total authorized $4,260.09
>
> Project dated November 21, 1930, Stamford Works, $29,500.00, covering advertising, 1931.

Upon motion, duly made, seconded and unanimously adopted, it was

> RESOLVED, that the Board of Directors hereby approves the recommendation of the Executive Committee that an offer of Preferred Stock only be made to employees for subscription for the year 1931, the price at which the stock is to be offered to be $100.00 per share, the offer in other respects to be in accordance with the terms and conditions enumerated in Report Secretary's No. 3859. No offering of Common Stock to employees for subscription will be made until general conditions have become more stabilized. The Executive Committee was au-

thorized to determine the maximum number of shares of Preferred Stock to be allotted on subscriptions received under the 1931 offer.

RESOLVED, that the action of the Officers of the company in effecting settlement of all claims of Henry Doherty Silk Company for the sum of $20,000.00, and the delivery to Atlas Powder Company of 3,000 shares Preferred Stock and 6,000 shares Common Stock of Napon Rayon Corporation, representing the entire holdings of Henry Doherty Silk Company, as well as the policy to be followed in the liquidation of the Napon Rayon Corporation, be and the same are hereby ratified and approved.

RESOLVED, that the recommendation of the Executive Committee to the effect that the total amount of Common Stock now in the Treasury, 7,707 shares, be applied to the exchange of Temporary Receipts issued in connection with the Peerless-Union deal and that an additional amount of 1,005 shares be purchased in the open market to complete the exchange of the entire amount of 8,712 shares represented by Temporary Receipts issued in connection with the Peerless-Union deal, making unnecessary the issuance of any Original Issue Stock for this purpose, be and the same is hereby ratified and approved;

FURTHER RESOLVED, that the proper Officers of this Company are hereby authorized to make application to the New York Stock Exchange for cancellation of authority heretofore granted by the New York Stock Exchange for

the listing of 3,861 shares of its Common Stock without par value, pursuant to listing application A-9597 dated October 14, 1930.

Upon motion, duly made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Directors hereby approves all of the proceedings of the Executive Committee meetings held on November 7th, 10th, 12th, 20th, 26th and December 3rd, 1930, subject to the foregoing actions taken by this Board upon specific subjects.

The Treasurer submitted report showing details of settlement made October 7, 1930 in re merger of Peerless Explosives Company and Union Explosives Company, which was accepted and ordered filed.

In connection with the failure of the Holston-Union National Bank, Mr. Warner asked what methods were used to check up the condition of the various banks in which the company carries deposits. Mr. Fogg reported that a list of all banks is submitted periodically to The National City Bank of New York for rating.

Mr. W. T. Penniman, General Manager Explosives Department, reported verbally on general conditions and prospects in the Explosive Department.

Mr. E. W. Moorhouse reported verbally on general conditions and prospects in the Cellulose Products Department.

Upon motion, the meeting adjourned.

(SIGNED) Isaac Fogg
SECRETARY
(SIGNED) Leland Lyon

(SIGNED) .....
(SIGNED) .....
(SIGNED) John W. Mathews
(SIGNED) E. W. Maynard
(SIGNED) E. W. Moorhouse
(SIGNED) W. T. Penniman
(SIGNED) Leonard Richards, Jr.
(SIGNED) J. F. Van Lear
(SIGNED) .....

EXHIBIT "C"

MEMORANDUM OF AGREEMENT dated the 7th day of October, one thousand nine hundred and thirty (1930), between R. I. BASHFORD, E. FROST, of Philadelphia, Pennsylvania, and EDWARD R. DAY, of White Haven, Pennsylvania, (hereinafter referred to as the "Stockholders"), parties of the first part, and H. K. SELIGMAN, of Tamaqua, Pennsylvania and W. E. FLETCHER, of Philadelphia, Pennsylvania (hereinafter referred to as the "Promoters"), parties of the second part.

WHEREAS, Stockholders are the owners of a majority of the outstanding stock of the Peerless Explosives Company (hereinafter described as "Peerless") and desire to exchange the same under the terms and conditions of a certain Plan of Reorganization as hereinafter set forth, and Promoters desire to acquire the same:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, this agreement

WITNESSETH:

I—Stockholders hereby warrant to the Promoters:

(1) That the Peerless Explosives Company is a corporation duly organized and existing under the laws of the State of Delaware with an authorized capital stock consisting of 40,000 shares of Preferred Stock of the par value of $25 each and 15,000 shares of Common Stock of no par value, of which 17,672 shares of Preferred Stock and 14,890 shares of Common Stock respectively are now issued and outstanding;

(2) That they personally own or control 8500 shares of said Common Stock;

(3) That the funded debt of Peerless consists of a mortgage bearing date May 19, 1927, to the Dime Bank Title and Trust Company of Wilkes-Barre, Pennsylvania, Trustee, to secure a note payable to bearer for $147,000.00, interest on said note being paid to May 19, 1930; also a mortgage given by Black Diamond Powder Company, dated July 31, 1925, to secure a bond in the sum of $133,000., the balance due thereon being $60,000. with the interest paid to August 1, 1930;

(4) That Black Diamond Powder Company (hereinafter described as "Black Diamond"), is a corporation organized under the laws of the State of Pennsylvania, having an authorized capital stock of 2,500 shares of the par value of $100 each, of which amount there is issued and outstanding 1,584 shares, all of which shares of capital stock Peerless owns or controls;

(5) That the balance sheet attached hereto, made

a part hereof and marked Exhibit "A" correctly sets forth the financial condition (including all known contingent liabilities) of Peerless and Black Diamond, as of December 31, 1929, and includes, in the judgment of Stockholders, adequate allowance or reserve for depreciation, doubtful accounts, inventory shrinkage and all income and other taxes accrued at the date thereof;

(6) That since December 31, 1929, there has not been any change in the authorized or outstanding capitalization of Peerless or Black Diamond, or any change in its financial condition from that set forth in said balance sheet, except such changes as may have occurred in the ordinary and regular conduct of its business, and that no dividends have been paid or declared subsequent to January 15, 1930;

(7) That at the date of settlement hereunder, the financial condition of Peerless and Black Diamond will be at least as good and their respective net worth at least as great as that set forth in said Exhibit "A", plus net earnings accumulated since December 31, 1929, explosions, Acts of God and the said dividend of January 15, 1930 excepted, and that no dividends will be paid or declared and no salaries paid except current salaries, subsequent to the date of this agreement;

(8) That the earnings statement attached hereto, made a part hereof and marked Exhibit "B" is a true and correct statement of the sales and earnings of Peerless and Black Diamond for the year ended December 31, 1929;

(9) That Peerless and Black Diamond own in fee simple all of their real estate and fixed assets free

and clear of all liens and encumbrances, save only the mortgages referred to in sub-division (3) of this Paragraph I;

(10) That Peerless and Black Diamond have no commitments or liabilities for salaries or for purchases or sales not shown on the said balance sheet, except those incurred in the ordinary course of business, and that they have no such commitments or liabilities incurred in the ordinary course of business which by their terms will remain in force beyond three (3) months from the date hereof, except contracts shown in Exhibit "C" attached hereto, and further that there are no suits pending or threatened against the company, except actions now pending brought in the Circuit Court of Floyd County, State of Indiana, by E. P. Noe, E. L. Noe and Sallie Noe growing out of an explosion which occurred on August 17, 1929, near New Albany, Indiana, the aggregate amount of plaintiffs' claims, as shown by Complaint filed, being $7,000. An action has also been entered in the Circuit Court of Jefferson County, Kentucky, by the same plaintiffs in the same cause of action, the amount claimed in the action brought in Kentucky being $3,000.

II—Promoters warrant that Peerless-Union Explosives Corporation (hereinafter referred to as the "New Company") is a corporation duly organized and existing under the laws of the State of Delaware, for the purpose of acquiring the assets of Peerless, Black Diamond and of the Union Explosives Company (hereinafter described as "Union"), a corporation organized and existing under the laws of the State of West Virginia, subject to their several liabilities as the same appear at the close of

business on the sixth day of October, 1930, all in accordance with the said Plan of Reorganization.

Promoters further warrant that upon the conclusion of the acquisition of the assets of Peerless, Black Diamond and Union, as herein contemplated, New Company will be the owner of all the assets of said Peerless, Black Diamond and Union, subject only to their several liabilities, as the same appear at the close of business on the sixth day of October, 1930, and will have a cash working capital of at least $300,000. and that, upon the completion of such transfers and of the underwriting hereinafter provided for, New Company will have an authorized capital of 150,000 shares represented by 50,000 shares of 6% Preferred Cumulative Stock (non-voting except under certain specified conditions), with the par value of $100 each, and 100,000 shares of Common Stock without nominal or par value, of which there will be outstanding 21,732 shares of Preferred Stock and 65,000 shares of Common Stock.

Promoters further agree that they will cause such corporate action to be taken by Peerless, Black Diamond, Union and New Company as may be necessary to effect the liquidation of the three former companies, or the transfer of their assets, subject to their liabilities, and the acquisition thereof by New Company.

III—Promoters warrant that Atlas Powder Company (hereinafter referred to as "Atlas") is a corporation duly organized and existing under the laws of the State of Delaware with an authorized capital of 600,000 shares, of which 100,000 shares of the par value of $100 each is Preferred Cumulative

Stock and 500,000 shares without nominal or par value is Common Stock; that of such authorized capital there is now issued and outstanding 90,000 shares of Preferred Cumulative Stock and 261,438-3/4 shares of Common Stock.

IV—Stockholders and Promoters respectively agree that Stockholders shall deliver to Promoters their entire holdings of Peerless, viz: 8,500 shares of Common Stock in exchange for 9,000 shares of the Common Stock of New Company and $595,000, of which $125,000 shall be represented by cash and the balance by the delivery of 2,225 shares of the Preferred Cumulative Stock of Atlas, which shall be accepted by Stockholders at the par value thereof, and 3,712-1/2 shares of the Common Stock of Atlas which shall be accepted by Stockholders at a price of $66.66-2/3 per share.

Stockholders hereby agree to accept at settlement temporary receipts for the Preferred and Common Stock of Atlas hereinabove provided bearing dividends at the rate of six per cent and $4 respectively per share per annum, and convertible into permanent certificates on and after the next respective dividend payment dates upon such stock. Dividends upon such temporary receipts shall be adjusted at the time of conversion.

As additoinal consideration for the exchange of said Peerless stock by Stockholders, Promoters agree to cause New Company to reimburse Stockholders for Federal Income Tax paid by them upon the profit accruing from the proposed reorganization as herein provided. Provided, however, that the aggregate amount to which the Stockholders shall be entitled to reimbursement shall under no

circumstances exceed the sum of $74,375. And provided, further, that Stockholders' Federal Income Tax Returns for the year 1930 shall be prepared under the supervision of Messrs. Barrow, Wade, Guthrie & Co., Public Accountants, who shall also represent Stockholders at the audit of said returns and at all conferences and hearings thereon.

V—Promoters agree to use their best efforts to cause the exchange of all of the outstanding Preferred Stock of Peerless, i. e. 17,672 shares of the par value of $25 each, for the sum of $25 per share, and an amount of Common Stock of New Company not to exceed in the aggregate 4,000 shares.

Promoters also agree to use their best efforts to cause the exchange of all of the outstanding minority Common Stock of Peerless, i. e. 6,390 shares, upon the basis of one-half share of Common Stock of New Company for each share of Peerless Common Stock.

VI—Promoters hereby warrant that they will cause the underwriting by Atlas of 21,732 shares of Preferred Stock and 32,198 shares of Common Stock of New Company in consideration for such amount of cash and securities of Atlas as may be necessary to effect the proposed reorganization and acquisition of all of the assets of Peerless, Black Diamond and Union, under the terms and conditions herein set forth, and to retain a cash working capital of $300,000.

VII—Stockholders agree that upon the completion of the exchange of their stock in the manner hereinbefore set forth, they will furnish Promoters with the resignations of all officers and directors of Peerless and Black Diamond.

VIII—Stockholders will cause Peerless and Black Diamond to give Promoters, their attorneys, accountants, appraisers and other agents full and complete access to their records and books of account in order that they may verify the accuracy of the warranties hereinbefore set forth in Paragraph I of this agreement and the Exhibits attached hereto.

IX—Settlement under this agreement shall be made not later than the seventh day of October, A. D. 1930.

X—All documents, titles, proceedings and other legal matters pertaining to the transactions provided for under this agreement shall be prepared by and/or be subject to the approval of Promoters' counsel, Messrs. Montgomery and McCracken, 1421 Chestnut Street, Philadelphia, Pennsylvania. The cost of all legal examinations and audits shall be defrayed by Promoters.

THIS AGREEMENT shall bind and inure to the benefit of the parties hereto, their respective executors, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year aforesaid.

R. I. Bashford	(SEAL)
E. Frost	(SEAL)
Edward R. Day	(SEAL)
H. K. Seligman	(SEAL)
W. E. Fletcher	(SEAL)

Signed, Sealed and Delivered)
:
in the presence of)
Lucien B. Carpenter

EXHIBIT "A"

PEERLESS EXPLOSIVES CO.

Final Balance Sheet——————December 31, 1929

ASSETS

1.	Real Estate, R. R. & Franchises	59,265.27	
2.	Plant Buildings	104,768.91	
3.	Pipe Lines	23,244.13	
4.	Furniture & Fixtures	4,599.15	
5.	Machinery & Equipment	129,135.58	
6.	Construction Accts.	11,601.91	
7.	Trucks, Etc.	37,424.81	
10.	Magazines	8,034.41	
		378,074.17	
L.	Less Reserve for Depreciation	120,173.04	257.901.13

8.	Cash		14,537.14	
9.	Accts. Receivable, Trade	257,176.59		
I.	Less Frt. Allowance	3,655.07	254,121.52	
11.	Accts. Receivable, Other		1,727.35	
14.	Notes	41,284.77		
K.	Less Notes " Disctd.	5,000.00	36,284.77	
25.	Trade Accep. Rec.	9,329.82		
R.	Less T. A. " Disctd.	6,499.41	2,830.41	
13.	Due from Employees		10,591.34	320,092.53
15.	Dynamite & Supplies		79,959.03	
16.	Raw Materials		47,170.41	
17.	Containers Returnable		716.00	127,845.44
18.	Deferred Charges			2,984.49
19.	Int. in Black Dia. Pdr. Co.			32,568.81

20.	Investments		2,800.00
21.	Good Will & Org. Expense		67,958.60
26.	Treasury Stock		7,525.00
			819,676.02

LIABILITIES

A.	Accts. Payable, Trade	101,810.19	
B.	" " Other	.....	
C.	Notes	166,325.99	
D.	Due Employees	450.16	
E.	Trade Accep. Payable	15,238.27	
O.	Accrued Expense	5,884.33	289,708.94
P.	Accrued Credits		368.00
F.	Capital Stock, Pref.	1,000,000.00	
24.	Less Unissued	551,000.00	449,000.00

G.	Paid in Surplus	661.00
M.	Reserve for Explosions	15,840.44
N.	" " Bad Debts	16,004.62
S.	Surplus	48,093.02
		819,676.02

(Pencil marking in lower left-hand corner)—M. P. C J W

EXHIBIT "A"

BLACK DIAMOND POWDER CO.

Final Balance Sheet————————December 31, 1929

ASSETS

1.	Real Estate, Rds., Etc.	6,783.32

2.	R. R. Siding & Trestle	8,407.06		
3.	Buildings	62,383.55		
4.	Machinery & Equipment	79,863.99		
5.	Furniture & Fixtures	539.92		
6.	Autos & Trucks	822.18		
19.	Horses & Wagons	404.00	159,204.02	
L.	Less Reserve for Dep.		59,655.16	99,548.86
7.	Cash		1,315.49	
8.	Accts. Receivable Trade	2,732.60		
K.	Less Frt. Allowance	895.73	1,836.87	
9.	Accts. Receivable Other		310.79	
17.	Notes Receivable	7,198.30		
H.	Less Notes " Endorsed	1,000.00		
M.	" " " Disctd.	6,198.30		3,463.15
11.	Raw Materials		19,338.36	

12.	Finished Powder	36,841.29	
13.	Containers Returnable	142.02	56,321.67
14.	Deferred Charges		1,597.84
			160,931.52

LIABILITIES

A.	Mortgage		75,000.00
B.	Accts. Payable, Trade	11,153.44	
C.	Accts. Payable, Other	4,821.97	
D.	Notes Payable	37,920.85	
F.	Trade Accept. Payable	2,379.12	54,275.42
E.	Capital Stock	250,000.00	
10.	Less Capital Stock Unissued	224,600.00	25,400.00
I.	Accrued Expense	6,468.74	

J.	Accrued Credits	1,007.99	7,476.73
16.	Surplus		*11,934.93
O.	Reserve for Explosions		10,714.30
G.	Sales	.....	
15.	Less Cost of Sales	.....	.....
			160,931.52

(Pencil markings in lower left-hand corner)—VFW J. L. L.

* RED.—(Printed in pencil following this figure.)

EXHIBIT "B"

PEERLESS EXPLOSIVES CO.

P. & L. Dynamite & Accessories, Twelve Months Ending Dec. 31, 1929.

	Quantity	Total Sales	Cost of Sales	Gross Profit
Dynamite	8,726,328	1,063,893.22	724,398.23	339,494.99
Fuse	9,272,103	78,903.18	66,971.51	11,931.67
Caps	1,784,300	22,193.02	17,400.81	4,792.21
E. B'S.	2,476,693	150,300.73	121,716.38	28,584.35
Misc. Goods	.....	6,459.61	5,581.07	878.54
Black Powder	162,980	264,103.52	260,481.97	3,621.55
Pellet Powder	204,850	16,429.60	14,749.99	1,679.61
By Products	.....	2,250.00	.....	2,250.00
		1,604,532.88	1,211,299.96	393,232.92

Other Income			14,136.89
			407,369.81

EXPENSES

Admin. & Overhead	14,575.00	
Advertising	4,471.90	
Taxes	1,708.94	
Insurance	119.63	
Interest	10,554.44	
Gen. Expenses	7,732.83	
Office "	5,799.95	
" Payroll.	8,187.80	
Disct. on Sales	7,597.00	
Rent	2,963.32	
Legal Expenses	997.00	
Magazine "	1,411.74	
" Adjustment Exp.	252.55	
Less on Sale of Trucks	736.01	67,108.11

		108,354.05	
Sales Expense		40,947.76	
Frt. on Sales		33,315.21	249,725.13
Drayage(			
(Birmingham	246.58	Net	157,644.68
Bluefield	675.49	Before deductions for depreciation	
Carnegie	3,570.96	Reserves for bad debts etc.	
Capels	389.65	G. P. Teal	
Evarts	44.04	asst Treas.	
Fostoria	1,578.06	JU/EC	
New Albany	258.63		
Osage	271.45		
Petersburg	171.00		
W. Haven	26,109.38		
	33,315.21		

EXHIBIT "B"

BLACK DIAMOND POWDER COMPANY

Profit & Loss Statement——December 1929.

		Total Sales	Cost of Sales	Gross Profit
Black Powder	20104	31567.20	20,903.37	10663.83
Rifle Powder	127	590.25	285.75	304.50
Cartridges	2500	125.00	50.00	75.00
Soda Bags	66	346.48		346.48
		32,628.93	21,239.12	11,389.81
Administration & Overhead		450.00		
Discounts		586.51		
Freight On Sales		368.99		
Interest		452.52		

Insurance				
Office Expense		152.17		
Sales Expense		759.49		
Trucking		1115.76		
Taxes		175.00		
General Expense		918.80		
Idle Mill Expense		125.60		
Rent		27.24		5,132.08
			Net Profit	6,257.73

*—(Crossed out on original.)

Profit and Loss Twelve Months, Ending December 31, 1929.

Black Powder	183,450	293,445.64	199,717.30	93,728.34
Rifle Powder	9,718	33,898.86	23,354.25	10,544.61
Cartridges	19,200	532.50	285.00	247.50
Soda Bags		346.48		346.48
		328,223.48	223,356.55	104,866.93

Other Income	750.70
	105,617.63
Expenses——	
Freight Overhead, Trucking Selling, etc.,	58,010.82
Net Profit	47,606.81

Before deduction for depreciation and reserves for bad debts etc.

Checked—JU V J W

G. P. Teal
Asst. Treas.

EXHIBIT "D"

MEMORANDUM OF AGREEMENT dated the 7th day of October, A. D. 1930, between J. EDGAR LONG, of Clarksburg, West Virginia (hereinafter referred to as the "Stockholder"), party of the first part, and H. K. SELIGMAN, of Tamaqua, Pennsylvania, and W. E. FLETCHER, of Philadelphia, Pennsylvania (hereinafter referred to as the "Promoters"), parties of the second part.

WHEREAS, Stockholder is the owner of a majority of the outstanding stock of the Union Explosives Company (hereinafter referred to as "Union") and desires to exchange the same under the terms and conditions of a certain Plan of Reorganization as hereinafter set forth, and Promoters desire to acquire the same:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, this agreement

WITNESSETH:

I—Stockholder hereby warrants to the Promoters:

(1) That the Union Explosives Company is a corporation duly organized and existing under the laws of the State of West Virginia with an authorized capital stock consisting of 5,000 shares of Preferred Stock of the par value of $100 each, and 5,000 shares of Common Stock without nominal or par value, of which 3,367-1/2 shares of Preferred Stock and 4,044 shares of Common Stock respectively are now issued and outstanding;

(2) That he personally owns or controls 2,198 shares of said Preferred Stock and 2,824 shares of said Common Stock;

(3) That the funded debt of Union consists of two mortgages aggregating the principal sum of $13,600.00.

(4) That the balance sheet attached hereto, made a part hereof and marked Exhibit "A" correctly sets forth the financial condition (including all known contingent liabilities) of Union, as of December 31, 1929, and includes adequate allowance or reserve for depreciation, doubtful accounts, inventory shrinkage and all income and other taxes accrued at the date thereof;

(5) That since December 31, 1929, there has not been any change in the authorized or outstanding capitalization of Union, or any change in its financial condition from that set forth in said balance sheet, except such changes as may have occurred in the ordinary and regular conduct of its business, and that no dividends have been paid or declared subsequent to December 31, 1929.

(6) That at the date of settlement hereunder, the financial condition of the company will be at least as good and its net worth at least as great as that set forth in said Exhibit "A", and that no dividends will be paid or declared and no salaries paid except current salaries, subsequent to the date of this Agreement;

(7) That the earnings statement attached hereto, made a part hereof and marked Exhibit "B" is a true and correct statement of the sales and earnings of Union for the year ended December 31, 1929;

(8) That Union owns in fee simple all of its real estate and fixed assets free and clear of all liens and encumbrances, save only the mortgages referred to in sub-division (3) of this Paragraph I;

(9) That Union has no commitments or liabilities for salaries or for purchases or sales not shown on the said balance sheet, except those incurred in the ordinary course of business, and that it has no such commitments or liabilities incurred in the ordinary course of business which by their terms will remain in force beyond three (3) months from the date hereof; and further that there are no suits pending or threatened against the company.

II—Promoters warrant that Peerless Union Explosives Corporation (hereinafter referred to as the "New Company") is a corporation duly organized and existing under the laws of the State of Delaware, for the purpose of acquiring the assets of Union, of Peerless Explosives Company (hereinafter referred to as "Peerless"), a corporation organized and existing under the laws of the State of Delaware, and of Black Diamond Powder Company (hereinafter referred to as "Black Diamond"), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, subject to their several liabilities as the same appear at the close of business on the sixth day of October, A. D. 1930, all in accordance with said Plan of Reorganization.

Promoters further warrant that upon the conclusion of the acquisition of the assets of Union, Peerless, and Black Diamond, as herein contemplated, New Company will be the owner of all the assets of said Union, Peerless and Black Diamond, subject only to their several liabilities, as the same ap-

pear at the close of business on the 6th day of October, 1930, and will have a cash working capital of at least $300,000. and that, upon the completion of such transfers and of the underwriting hereinafter provided for, New Company will have an authorized capital of 150,000 shares represented by 50,000 shares of 6% Preferred Cumulative Stock (non-voting except under certain specified conditions) with the par value of $100 each, and 100,000 shares of Common Stock without nominal or par value, of which there will be outstanding 21,732 shares of Preferred Stock and 65,000 shares of Common Stock.

Promoters further agree that they will cause such corporate action to be taken by Union, Peerless, Black Diamond and New Company as may be necessary to effect the liquidation of the three former companies, or the transfer of their assets subject to their liabilities, and the acquisition thereof by New Company.

III—Promoters warrant that Atlas Powder Company (hereinafter referred to as "Atlas") is a corporation duly organized and existing under the laws of the State of Delaware with an authorized capital of 600,000 shares, of which 100,000 shares of the par value of $100 each is Preferred Cumulative Stock and 500,000 shares without nominal or par value is Common Stock; that of such authorized capital there is now issued and outstanding 90,000 shares of Preferred Cumulative Stock and 261,438-3/4 shares of Common Stock.

IV—Stockholders and Promoters respectively agree that Stockholders shall deliver to Promoters 2,824 shares of Common Stock of Union in exchange

for 8,500 shares of the Common Stock of New Company and $499,591.75, represented by $333,333.33-1/3 in Common Stock of Atlas at a price of $66.66-2/3 per share, and $166,258.42 in Preferred Stock of Atlas at par.

Stockholder and Promoters also respectively agree that Stockholder shall deliver to Promoters 2,198 shares of Preferred Stock of Union in exchange for an equal amount of Atlas Preferred Stock and 802 shares of Common Stock of New Company.

Stockholder agrees to accept at settlement temporary receipts for the Preferred and Common Stock of Atlas hereinabove provided bearing dividends at the rate of six per cent and $4 respectively per share per annum, and convertible into permanent certificates on and after the next respective dividend payment dates upon such stock. Dividends upon such temporary receipts shall be adjusted at the time of conversion.

V—Promoters agree to use their best efforts to cause the exchange of the remaining 1,169-1/2 shares of Preferred Stock of Union, for a total of $93,700 in cash, 232-1/ 2 shares of Atlas Preferred Stock, and 585 shares of Common Stock of New Company.

Promoters also agree to use their best efforts to cause the exchange of all of the outstanding minority Common Stock of Union, i. e. 1,220 shares upon the basis of one share of the Common Stock of New Company for each share of Union Common Stock.

VI—Promoters hereby warrant that they will cause the underwriting by Atlas of 21,732 shares of Preferred Stock and 32,198 shares of Common

Stock of New Company in consideration for such amount of cash and securities of Atlas as may be necessary to affect the proposed reorganization and acquisition of all of the assets of Union, Peerless and Black Diamond, under the terms and conditions herein set forth, and to retain a cash working capital of $300,000.

VII—Stockholder agrees that upon the completion of the exchange of his stock in the manner hereinbefore set forth, he will furnish Promoters with the resignations of all officers and directors of Union.

VIII—Stockholders will cause Union to give Promoters, their attorneys, accountants, appraisers and other agents full and complete access to its records and books of account in order that they may verify the accuracy of the warranties hereinbefore set forth in Paragraph I of this agreement and the Exhibits attached hereto.

IX—Stockholder agrees to enter the employ of New Company upon approximately the same terms upon which he is now employed by Union, undertaking to use his best efforts in the interest of New Company, subject to the direction of its officers and directors.

X—Stockholder agrees at settlement to enter into a contract with New Company whereby he shall agree not to enter into competition with it, directly or indirectly, for a period of ten years in the United States of America.

XI—Settlement under this agreement shall be made not later than the 7th day of October, A. D. 1930.

XII—All documents, titles, proceedings and other legal matters pertaining to the transactions provided for under this agreement shall be prepared by and/or be subject to the approval of Promoters' counsel, Messrs. Montgomery and McCracken, 1421 Chestnut Street, Philadelphia, Pennsylvania. The cost of all legal examinations and audits shall be defrayed by Promoters.

THIS AGREEMENT shall bind and inure to the benefit of the parties hereto, their respective executors, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their several hands and seals the day and year aforesaid.

J. Edgar Long (SEAL)
H. K. Seligman (SEAL)
W. E. Fletcher (SEAL)

Signed, Sealed and Delivered)
:
in the presence of)
(Illegible)
Lucien B. Carpenter.

EXHIBIT "A"

UNION EXPLOSIVES COMPANY,
CLARKSBURG, WEST VIRGINIA

STATEMENT OF ASSETS & LIABILITIES
AS AT
DECEMBER 31, 1929

	Amount	Total
Assets:		
Fixed:		
Real Estate	$23,625.00	
Buildings	45,031.56	
Machinery & Equipment	226,761.30	
Reserve Machinery	18,387.04	
Railroad Siding	7,014.47	
Industrial Tracks	1,489.27	
Plant Road Improvements	1,755.76	

Attached Utility Value		28,000.00	
Magazine Buildings		52,900.23	
Automobiles & Trucks		25,522.95	
Office Furn. & Fixtures		6,525.54	
Cost of Permissibles		2,566.21	$439,579.33
Current:			
Cash in Banks	$8,455.59		
Contingent Funds	4,315.03	12,770.52	
Notes Receivable			
Accounts Receivable:		34,024.12	
Sales	373,408.57		
Sundry	39,218.43	412.627.00	
Raw Materials		72,050.15	
Finished Products		123,591.52	
Work in Process		7,632.01	662,695.32

Deferred & Prepaid:			
Interest		775.80	
Insurance		2,738.39	
Taxes		441.50	
Rent		938.37	
Auto Licenses		315.59	
Association Dues		170.02	
Deferred Charges		3,154.68	8,534.35
Total Assets			1,110,809.00
Liabilities:			
Capital Stock	463,250.00		
Less Treasury Stock	126,500.00	336,750.00	
Notes Payable		242,535.45	
Accounts Payable:			
Purchases	50,530.19		
Sundry	148,362.78	198,892.97	
Reserve for Deprec.		182,778.23	

Total Liabilities			960,956.65
Surplus			149,852.35
Surplus November 30, 1929		172,784.36	
Less Payment for 1928 Income Tax	1,868.21		
Dividend #2	31,883.42	33,751.63	139,032.73
Profit for Month of December 1929			10,819.62

EXHIBIT "B"

UNION EXPLOSIVES COMPANY
Clarksburg, West Virginia

STATEMENT OF INCOME and EXPENSES—PERIOD ENDED DECEMBER 31, 1929

Income	
Value of Production	$ 772,995.31
High Explosive Sales	1,310,546.20
Supplies Sales	311,056.45
Black Powder Sales	107,187.27
Raw Material Sales	16,550.22
Interest Earned	6,403.63
Discount on Purchases	112.43
Miscellaneous Income	268.15
	2,525,119.66
Direct Cost	
Direct Labor	59,564.26
Material used	579,658.87
Factory Overhead	133,772.18
High Explosives Cost	989,863.31
Supplies Cost	249,427.45
Black Powder Costs	90,780.25
Raw Material Costs	16,543.76
	2,119,610.08
Administrative Expenses	
Salaries	32,073.37

Office Expense	6,454.91
Traveling	11,111.09
Officers' Salaries	7,500.00
Legal Expense	625.53
Interest	8,952.78
Taxes	2,398.03
Insurance	4,860.70
Group Insurance	1,287.93
Loss—Sale Capital Assets	225.40
Bad Debts	6,228.06
Discounts Allowed	23,657.58
	104,924.58

Sales Expenses

Salaries	55,037.50
Salesmen's Expenses	17,990.42
Advertising	776.20
Commissions	57,196.49
Office Supplies & Expenses	7,915.98
Magazine Rentals	2,178.00
Magazine Bldg. & Road Repairs	401.58
Delivery Expenses	48,726.24
Depreciation	7,010.79
Inventory Adjustment	1,970.89
	199,204.09

Statement of Profit and Loss - Period ended December 31, 1929

Income	%	
Sales	1.0000	$1,745,340.14
Less: Cost of Sales	.7715	1,346,614.77

Income from Sales	.2285	398,725.37
Other Income	.0038	6,784.21
Gross Income	.2323	405,509.58
Expenses		
Administrative	.0601	104,924.58
Sales	.1141	199,204.09
Total Expense	.1742	304,128.67
Profit	.0581	101,380.91
	.2323	$ 405,509.58

EXHIBIT "E"

MEMORANDUM OF AGREEMENT dated the 7th day of October, A. D. 1930, between H. K. SELIGMAN, of Tamaqua, Pennsylvania, and W. E. FLETCHER, of Philadelphia, Pennsylvania (hereinafter referred to as "Promoters") parties of the first part, and PEERLESS-UNION EXPLOSIVES CORPORATION (hereinafter referred to as "New Company") party of the second part.

WHEREAS, Promoters own or control substantially all of the outstanding capital stock of the Peerless Explosives Company (hereinafter referred to as "Peerless"), a corporation organized and existing under the laws of the State of Delaware, and Union Explosives Company (hereinafter referred to as "Union"), a corporation organized and existing under the laws of the State of West Virginia; and

WHEREAS, Promoters and New Company desire to exchange the same under the terms and conditions hereinafter set forth, pursuant to a certain Plan of Reorganization:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, this agreement

WITNESSETH:

I—Promoters and New Company respectively agree that Promoters shall cause to be delivered to New Company all of their holdings in the Preferred and Common Stock of Peerless and Union, viz: 16,128 shares of Preferred Stock of Peerless, 14,288 shares of Common Stock of Peerless, 3,367-1/2 shares of Preferred Stock of Union, and 4,044 shares of Common Stock of Union in exchange for $632,150 in cash, 6,318 shares of Preferred Stock of Atlas Powder Company (hereinafter referred to as "Atlas"), a corporation organized and existing under the laws of the State of Delaware, which Preferred Stock shall be accepted by Promoters at par, 8,712-1/2 shares of Common Stock of Atlas, at a price of $66.66-2/3 per share, and 32,145.79 shares of Common Stock of New Company.

Promoters hereby agree to accept at settlement temporary receipts for the Preferred and Common Stock of Atlas hereinabove provided bearing dividends at the rate of six per cent and $4 respectively per share per annum, and convertible into permanent certificates on and after the next respective dividend payment dates upon such stock. Dividends upon such temporary receipts shall be adjusted at the time of conversion.

As additional consideration for the exchange of

said Peerless and Union stocks by Promoters, New Company agrees to reimburse R. T. Bashford, E. Frost, and Edward Day, of Wilkes-Barre, Pennsylvania for all Federal Income Taxes imposed upon them as a result of the transfer by them to Promoters of their holdings in Peerless Explosives Company in accordance with a certain agreement dated the seventh day of October, 1930, and in pursuance of the said Plan of Reorganization. Provided, however, that the aggregate amount of such reimbursement shall under no circumstances exceed the sum of $74,375. And provided further that the Federal Income Tax Returns of the said R. T. Bashford, E. Frost and Edward Day, for the year 1930, shall be prepared under the supervision of Messrs. Barrow, Wade, Guthrie & Co., Public Accountants, who shall also represent the said taxpayers at the audit of their returns and at all conferences and hearings thereon.

III—Promoters hereby warrant that they will cause the underwriting by Atlas of 21,732 shares of Preferred Stock and 32,198 shares of Common Stock of New Company in consideration for such amount of cash and securities of Atlas as may be necessary for New Company to acquire the securities and/or assets of Peerless and Union from Promoters, as herein provided, and to retain a cash working capital of $300,000.

IV—New Company agrees that upon the receipt of said securities of Union and Peerless, it will cause such corporate action to be taken by them and by Black Diamond Powder Company, of which all of the outstanding stock is owned or controlled by Peerless, as may be necessary to effect the liquida-

tion of the three said companies, or the transfer of their assets, subject to their several liabilities, and the acquisition thereof by New Company.

V—New Company warrants that upon the completion of the acquisition by it of the assets of Peerless, Black Diamond and Union as herein contemplated, it will be the owner of all of the assets of said Peerless, Black Diamond and Union subject only to their several liabilities as the same appear at the close of business on the sixth day of October, 1930, and will have a cash working capital of at least $300,000, and that upon the completion of such transfers and of the underwriting herein provided, New Company will have an authorized capital of 150,000 shares represented by 50,000 shares of 6% Preferred Cumulative Stock (non-voting except under certain specified conditions) of the par value of $100 each, and 100,000 shares of Common Stock without nominal or par value, of which 21,732 shares of Preferred Stock and 65,000 shares of Common Stock will be outstanding.

VI—Promoters agree that upon the completion of the exchange of their stock in the manner hereinbefore set forth, they will furnish New Company with the resignation of all officers and directors of Peerless, Black Diamond and Union.

VII—Promoters agree to cause R. T. Bashford, E. Frost and J. Edgar Long to enter the employ of New Company upon approximately the same terms upon which they are now employed by Peerless and Union respectively, each undertaking to use his best efforts in the interest of New Company, subject to the direction of its officers and directors.

VIII—Promoters agree to cause R. T. Bashford, E. Frost and J. Edgar Long to enter into contracts with New Company whereby they severally agree not to enter into competition with it directly or indirectly, for a period of ten (10) years in the United States of America.

IX—Settlement under this agreement shall be made not later than the seventh day of October A. D. 1930.

X—All documents, titles, proceedings and other legal matters pertaining to the transactions provided for under this agreement shall be prepared by and/or be subject to the approval of Montgomery and McCracken, Esquires, 1421 Chestnut Street, Philadelphia, Pennsylvania. The cost of all legal examinations, audits, and so forth shall be defrayed by New Company.

THIS AGREEMENT shall bind and inure to the benefit of the parties hereto, their respective executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the individual parties hereto have hereunto set their hands and seals, and New Company has caused this agreement to be entered into on its behalf by its President, and its corporate seal to be attached hereto, attested by its Secretary, the day and year aforesaid.

Signed, sealed and delivered)
:
in the presence of)
W. E. Fletcher (SEAL)
H. K. Seligman (SEAL)

PEERLESS-UNION EXPLOSIVES CORPORATION
BY H. K. Seligman
President

(SEAL)

Attest:
W. E. Fletcher
Secretary

E. Frost
V. Pres

EXHIBIT "F"

MEMORANDUM OF AGREEMENT dated the seventh day of October, one thousand nine hundred and thirty (1930), between EDWARD R. DAY, of White Haven, Pennsylvania (hereinafter referred to as "Day"), party of the first part, PEERLESS-UNION EXPLOSIVES CORPORATION, a corporation organized and existing under the laws of the State of Delaware, (hereinafter referred to as "New Company") party of the second part, and ATLAS POWDER COMPANY, a corporation likewise organized and existing under the laws of the State of Delaware (hereinafter referred to as "Atlas"), party of the third part.

WHEREAS, simultaneously with the execution of this agreement Day, pursuant to a certain Plan of Reorganization has transferred his holdings, viz: 2,534.38 shares of Common Stock of Peerless Explosives Company, a corporation organized and exist-

ing under the laws of the State of Delaware, to H. K. Seligman and W. E. Fletcher, who in turn have transferred the same to New Company; and

WHEREAS, part of the consideration for such transfer is to be the reimbursement by New Company of any Federal Income Tax imposed upon Day as a result of the said transaction or the subsequent sale by him of the securities of Atlas received by him therein, all under the terms and conditions hereinafter set forth: and

WHEREAS, Atlas is a substantial stockholder of New Company and desires that such Plan of Reorganization be consummated:

NOW, THEREFORE, in consideration of the transfer and delivery by Day to the said H. K. Seligman and W. E. Fletcher of his holdings in the Peerless Explosives Company simultaneously with the execution of this agreement, and for other good and valuable consideration, the receipt whereof by New Company and Atlas is hereby acknowledged, this agreement

WITNESSETH:

I—Day agrees to promptly forward to New Company any notices received from time to time from the Internal Revenue Department assessing Federal Income Tax upon the profit derived by him (1) from the transfer of his said holdings in the Peerless Explosives Company to H. K. Seligman and W. E. Fletcher in accordance with a certain agreement between them and other stockholders of the said Peerless Explosives Company, dated the seventh day of October, 1930, and (2) from the subse-

quent sale by Day of the securities of Atlas received by him in exchange for his said Peerless holdings under the said agreement. A list setting forth the said cash and securities of Atlas received by Day as aforesaid is attached hereto, made a part hereof and marked Exhibit "A".

II—New Company agrees to place Day in funds for the payment of such taxes when due, provided that for the purpose of computing profit upon the subsequent sale by Day of securities received by him under such agreement and the obligation of New Company hereunder the sales price of such securities shall in no event exceed $100 per share for Atlas Preferred Stock and $66.66-2/3 per share for Atlas Common Stock, and provided further that the obligation of New Company to place Day in funds for the payment of Federal Income Tax shall in no event exceed in the aggregate the sum of $22,175.83. New Company assumes no obligation hereunder to pay or reimburse Day for any tax imposed upon the receipt or sale of any shares of Common Stock of Peerless-Union Explosives Corporation.

III—Day agrees that his Federal Income Tax Return for the year 1930, and for any other year in which any such sales shall be made, shall be prepared under the supervision of Messrs. Barrow, Wade, Guthrie & Co., Public Accountants. Day also agrees that said accountants shall represent him at all audits of said returns, and at all conferences and hearings thereon, and that he will execute such powers of attorney and other documents as may be necessary in this connection. Day also agrees that he will not pay any such taxes without the written

consent of New Company. New Company reserves the right at its own cost and expense to protest any Federal Income Tax assessed against Day upon the said profit. New Company shall pay all charges of the accountants and in the event of a contest all other charges including interest and penalties. No such costs, interest or penalties shall be credited against the obligation of New Company contained in Paragraph II of this agreement.

IV—Atlas hereby guarantees the payments to be made by New Company at the times and in the amounts herein provided.

V—This agreement shall bind and inure to the benefit of the parties hereto, their respective executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Day has hereunto set his hand and seal, and the corporate parties hereto have caused this agreement to be executed on their several behalves the day and year aforesaid.

Signed, Sealed and Delivered)
:
in the presence of)

Edward R. Day (SEAL)

PEERLESS-UNION EXPLOSIVES CORPORATION

Seal of Peerless-Union
Explosives Corporation

By H. K. Seligman
President

Attest:
W. E. Fletcher
Secretary

ATLAS POWDER COMPANY
By Isaac Fogg
Secretary-Treasurer

EXHIBIT "A"

List of Cash and Securities of the
Atlas Powder Company received by Day

—o—

Cash — — — — — — — — — — — — — — — — — — $42,906.67

Temporary receipts numbered from
inclusive, for 625 shares of Preferred
Stock of Atlas Powder Company

Temporary receipts numbered from
inclusive, for 1,080 shares of Common
Stock of Atlas Powder Company

		Pfd.	Common
Edward R. Day	P-27/32 incl.	600 shs.	C-17
	P-33	25 "	1080 shs.
		625 "	

EXHIBIT "G"

MEMORANDUM OF AGREEMENT dated the day of October, one thousand nine hundred and thirty (1930), between R. I. BASHFORD, of Philadelphia, Pennsylvania (hereinafter referred

to as "Bashford"), party of the first part, PEERLESS-UNION EXPLOSIVES CORPORATION, a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as "New Company") party of the second part, and ATLAS POWDER COMPANY, a corporation likewise organized and existing under the laws of the State of Delaware (hereinafter referred to as "Atlas"), party of the third part.

WHEREAS, simultaneously with the execution of this agreement Bashford, pursuant to a certain Plan of Reorganization has transferred his holdings, viz: 2,534.38 shares of Common Stock of Peerless Explosives Company, a corporation organized and existing under the laws of the State of Delaware, to H. K. Seligman and W. E. Fletcher, who in turn have transferred the same to New Company; and

WHEREAS, part of the consideration for such transfer is to be the reimbursement by New Company of any Federal Income Tax imposed upon Bashford as a result of the said transaction or the subsequent sale by him of the securities of Atlas received by him therein, all under the terms and conditions hereinafter set forth; and

WHEREAS, Atlas is a substantial stockholder of New Company and desires that such Plan of Reorganization be consummated:

NOW, THEREFORE, in consideration of the transfer and delivery by Bashford to the said H. K. Seligman and W. E. Fletcher of his holdings in the Peerless Explosives Company simultaneously with the execution of this agreement, and for other good and valuable consideration, the receipt whereof by

New Company and Atlas is hereby acknowledged, this agreement

WITNESSETH:

I—Bashford agrees to promptly forward to New Company any notices received from time to time from the Internal Revenue Department assessing Federal Income Tax upon the profit derived by him (1) from the transfer of his said holdings in the Peerless Explosives Company to H. K. Seligman and W. E. Fletcher in accordance with a certain agreement between them and other stockholders of the said Peerless Explosives Company, dated the seventh day of October, 1930, and (2) from the subsequent sale by Bashford of the securities of Atlas received by him in exchange for his said Peerless holdings under the said agreement. A list setting forth the said cash and securities of Atlas received by Bashford as aforesaid is attached hereto, made a part hereof and marked Exhibit "A".

II—New Company agrees to place Bashford in funds for the payment of such taxes when due, provided that for the purpose of computing profit upon the subsequent sale by Bashford of securities received by him under such agreement and the obligation of New Company hereunder the sales price of such securities shall in no event exceed $100 per share for Atlas Preferred Stock and $66.66-2/3 per share for Atlas Common Stock, and provided further that the obligation of New Company to place Bashford in funds for the payment of Federal Income Tax shall in no event exceed in the aggregate the sum of $22,175.83. New Company assumes no obligation hereunder to pay or reimburse Bashford

for any tax imposed upon the receipt or sale of any shares of Common Stock of Peerless-Union Explosives Corporation.

III—Bashford agrees that his Federal Income Tax Return for the year 1930, and for any other year in which any such sales shall be made, shall be prepared under the supervision of Messrs. Barrow, Wade, Guthrie & Co., Public Accountants. Bashford also agrees that said accountants shall represent him at all audits of said returns, and at all conferences and hearings thereon, and that he will execute such powers of attorney and other documents as may be necessary in this connection. Bashford also agrees that he will not pay any such taxes without the written consent of New Company. New Company reserves the right at its own cost and expense to protest any Federal Income Tax assessed against Bashford upon the said profit. New Company shall pay all charges of the accountants and in the event of a contest all other charges including interest and penalties. No such costs, interest or penalties shall be credited against the obligation of New Company contained in Paragraph II of this agreement.

IV—Atlas hereby guarantees the payments to be made by New Company at the times and in the amounts herein provided.

V—This agreement shall bind and inure to the benefit of the parties hereto, their respective executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Bashford has hereunto set his hand and seal, and the corporate parties hereto have caused this agreement to be exe-

cuted on their several behalves the day and year aforesaid.

Signed, Sealed and Delivered)
:
in the presence of)
Raymond I. Bashford (SEAL)

PEERLESS-UNION EXPLOSIVES CORPORATION
By H. K. Seligman
President

Attest:
W. E. Fletcher
Secretary

ATLAS POWDER COMPANY
By Isaac Fogg
Secretary-Treasurer

EXHIBIT "A"

List of Cash and Securities of the Atlas Powder Company received by R. I. Bashford

—o—o—o—o—o—

Cash — — — — — — — — — — — — — — — —	$25,306.67
Temporary receipts numbered from { P-20/25 incl. 600 shs. P-26 25 "	
inclusive, for 625 shares of Preferred Stock of Atlas Powder Company	625

Temporary receipts numbered **from* C-16—
inclusive, for 1,344 shares of Common
Stock of Atlas Powder Company.

* (Words in italics crossed out on original)

EXHIBIT "H"

MEMORANDUM OF AGREEMENT dated the seventh day of October, one thousand nine hundred and thirty (1930), between EUGENE FROST, of Philadelphia, Pennsylvania (hereinafter referred to as "Frost"), party of the first part, PEERLESS-UNION EXPLOSIVES CORPORATION, a corporation organized and existing under the laws of the State of Delaware, (hereinafter referred to as "New Company") party of the second part, and ATLAS POWDER COMPANY, a corporation likewise organized and existing under the laws of the State of Delaware (hereinafter referred to as "Atlas"), party of the third part.

WHEREAS, simultaneously with the execution of this agreement Frost, pursuant to a certain Plan of Reorganization has transferred his holdings, viz: 3,296.24 shares of Common Stock of Peerless Explosives Company, a corporation organized and existing under the laws of the State of Delaware, to H. K. Seligman and W. E. Fletcher, who in turn have transferred the same to New Company; and

WHEREAS, part of the consideration for such transfer is to be the reimbursement by New Company of any Federal Income Tax imposed upon

Frost as a result of the said transaction or the subsequent sale by him of the securities of Atlas received by him therein, all under the terms and conditions hereinafter set forth; and

WHEREAS, Atlas is a substantial stockholder of New Company and desires that such Plan of Reorganization be consummated:

NOW, THEREFORE, in consideration of the transfer and delivery by Frost to the said H. K. Seligman and W. E. Fletcher of his holdings in the Peerless Explosives Company simultaneously with the execution of this agreement, and for other good and valuable consideration, the receipt whereof by New Company and Atlas is hereby acknowledged, this agreement

WITNESSETH:

I—Frost agrees to promptly forward to New Company any notices received from time to time from the Internal Revenue Department assessing Federal Income Tax upon the profit derived by him (1) from the transfer of his said holdings in the Peerless Explosives Company to H. K. Seligman and W. E. Fletcher in accordance with a certain agreement between them and other stockholders of the said Peerless Explosives Company, dated the seventh day of October, 1930, and (2) from the subsequent sale by Frost of the securities of Atlas received by him in exchange for his said Peerless holdings under the said agreement. A list setting forth the said cash and securities of Atlas received by Frost as aforesaid is attached hereto, made a part hereof and marked Exhibit "A".

II—New Company agrees to place Frost in funds for the payment of such taxes when due, provided that for the purpose of computing profit upon the subsequent sale by Frost of securities received by him under such agreement and the obligation of New Company hereunder the sales price of such securities shall in no event exceed $100 per share for Atlas Preferred Stock and $66.66-2/3 per share for Atlas Common Stock, and provided further that the obligation of New Company to place Frost in funds for the payment of Federal Income Tax shall in no event exceed in the aggregate the sum of $28,842.09. New Company assumes no obligation hereunder to pay or reimburse Frost for any tax imposed upon the receipt or sale of any shares of Common Stock of Peerless-Union Explosives Corporation.

III—Frost agrees that his Federal Income Tax Return for the year 1930, and for any other year in which any such sales shall be made, shall be prepared under the supervision of Messrs. Barrow, Wade, Guthrie & Co., Public Accountants. Frost also agrees that said accountants shall represent him at all audits of said returns and at all conferences and hearings thereon, and that he will execute such powers of attorney and other documents as may be necessary in this connection. Frost also agrees that he will not pay any such taxes without the written consent of the New Company. New Company reserves the right at its own cost and expense to protest any Federal Income Tax assessed against Frost upon the said profit. New Company shall pay all charges of the accountants and in the event of a contest all other charges including interest and penalties. No such costs, interest or penalties

shall be credited against the obligation of New Company contained in Paragraph II of this agreement.

IV—Atlas hereby guarantees the payments to be made by New Company at the times and in the amounts herein provided.

V—This agreement shall bind and inure to the benefit of the parties hereto, their respective executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Frost has hereunto set his hand and seal, and the corporate parties hereto have caused this agreement to be executed on their several behalves the day and year aforesaid.

Signed, Sealed and Delivered)
:
in the presence of)
Eugene Frost (SEAL)

PEERLESS-UNION EXPLOSIVES CORPORATION
By H. K. Seligman
President

Attest:
W. E. Fletcher
Secretary

(SEAL)

ATLAS POWDER COMPANY
By Isaac Fogg
Secretary-Treasurer

EXHIBIT "A"

List of Cash and Securities of the Atlas Powder Company received by Eugene Frost

Cash — — — — — — — — $50,536.66

Temporary receipts numbered from
for 959 shares of Preferred Stock of
Atlas Powder Company

Temporary receipts numbered from
for 1,264-1/2 shares of Common Stock
of Atlas Powder Company.

ATLAS POWDER CO. STOCK

	PFD		COM.	
J. R. Ward	P-14 - 10	Shs.	C-11 -	24 Shs
E. E. Locklin	P-16 - 48	"		
C. S. Simonsen	P-17 - 85	"	C-13	16½
Eugene Frost	P-18 - 70	"	C-14	105
"	P-19-746	"	C-15	1119
	959			1264½

EXHIBIT "J"

October 7, 1930.

Mr. Eugene Frost,
c/o Peerless Explosives Company
260 South Broad Street,
Philadelphia, Penna.

Dear Sir:

Referring to a certain agreement entered into by us, of even date, covering the payment of income taxes imposed upon you as the holder of certain shares of common stock of Peerless Explosives Company, we understand that of the 3,296.24 shares transferred to H. K. Seligman and W. E. Fletcher by you, pursuant to a certain Plan of Reorganization, 761.86 shares were owned by the following:

George C. Dissette	25
Cora D. Wilson	25
J. R. Ward	57.14
J. E. Slusser	42.86
F. E. Sorensen	35.72
George P. Teel	28.57
V. J. Walters	28.57
E. E. Locklin	236
C. S. Simonsen	155
W. C. Manning	128

In consideration for the delivery by you of the said shares, the undersigned hereby agree that the obligation imposed upon them under the terms of the said income tax agreement of even date shall extend to and apply under the same terms and con-

ditions to any income tax imposed upon the aforementioned as a result of the delivery of the said shares, in accordance with the said Plan of Reorganization. Provided always that the total tax to be paid by the undersigned shall in no event exceed the sum of $28,842.09.

Very truly yours,

PEERLESS-UNION EXPLOSIVES CORPORATION

By H. K. SELIGMAN
President

Accepted:

ATLAS POWDER COMPANY

By ISAAC FOGG
Secretary-Treasurer

EXHIBIT "K"

PEERLESS EXPLOSIVES COMPANY.

Special Meeting of Directors

A special meeting of the Board of Directors of PEERLESS EXPLOSIVES COMPANY was held at the office of the corporation, 260 South Broad Street, Philadelphia, Pennsylvania, on Monday, January 5, 1931, at 3:00 o'clock P. M.

The following Directors were present:

H. K. Seligman,
W. E. Fletcher,
Geo. P. Teel,

being more than a majority of the members of the Board, and therefore a quorum.

Mr. H. K. Seligman, President of the corporation, acted as Chairman of the meeting, and Mr. W. E. Fletcher, Secretary of the corporation, acted as Secretary of the meeting.

The Secretary presented and read a written call and waiver of notice, pursuant to which the meeting was held, signed by all of the Directors of the corporation, specifying the purposes thereof, and the same was ordered prefixed to the minutes of this meeting.

The Chairman thereupon stated that this meeting had been called for the purpose of taking action upon the proposed dissolution of the corporation. He called to the attention of the Board the fact that the corporation had sold its entire business and assets, subject to its outstanding liabilities, to Peerless-Union Explosives Corporation on October 7, 1930, in exchange for note of said Peerless-Union Explosives Corporation in the amount $1,036,800.00; that said note now represents the only asset of this Corporation; that all of the outstanding preferred and common stock of this Corporation is now owned by said Peerless-Union Explosives Corporation; and that this Corporation is not now engaged in any active business.

Thereupon, on motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED, That in the judgment of this Board of Directors it is advisable and most

for the benefit of Peerless Explosives Company that said corporation should be dissolved.

RESOLVED FURTHER, That the officers of this Corporation be and they are hereby authorized and instructed to endeavor to obtain the unanimous consent of all the stockholders of the corporation to the dissolution of the corporation.

RESOLVED FURTHER, That upon securing the unanimous consent, in writing, of all of the stockholders of the corporation, the President and the Secretary and Treasurer of this corporation be and they are hereby authorized directed and empowered to make and file all such certificates as may be required by the Laws of the State of Delaware in order to effect the dissolution of this corporation.

RESOLVED FURTHER, That upon the completion of the dissolution of this corporation, the proper officers of this corporation be and they are hereby authorized, directed and empowered to mark cancelled the note of Peerless-Union Explosives Corporation, dated October 7, 1930, and drawn to the order of this corporation in the sum of $1,036,800.00, and to deliver the same to Peerless-Union Explosives Corporation in exchange for certificates for all of the outstanding preferred and common stock of this corporation, duly endorsed for transfer.

RESOLVED FURTHER, That upon receipt of such stock certificates for all of the outstanding preferred and common stock of this corporation, the proper officers of this corporation

be and they are hereby authorized, directed and empowered to cancel the same and to attach such certificates to the appropriate stubs in the several stock certificate books of this corporation.

There being no further business to come before the meeting, the same was, on motion duly made and seconded, adjourned.

(SIGNED) W. E. Fletcher
Secretary.

Approved:

(SIGNED) H. K. Seligman
Chairman.

EXHIBIT "L"

COPY

CERTIFICATE OF DISSOLUTION

of

PEERLESS EXPLOSIVES COMPANY

WE, the undersigned, being respectively the President and the Secretary and Treasurer of Peerless Explosives Company, a corporation of the State of Delaware, do hereby certify:

FIRST: That the location of the principal office of the corporation in the State of Delaware is at Wilmington, County of New Castle.

SECOND: That at a meeting of the Board of Directors of said corporation duly held on the fifth day of January, A. D. 1931, and of which meeting every director waived notice, in writing, the following Resolution was adopted by a majority of the whole Board of Directors:

> RESOLVED, That in the judgment of this Board of Directors it is advisable and most for the benefit of Peerless Explosives Company that said corporation should be dissolved.

THIRD: That all of the stockholders of the corporation have consented, in writing, to the dissolution of the corporation, which Consent is hereto annexed and made a part hereof.

FOURTH: That the names and residences of the Directors and officers of said corporation are as follows:

Directors

Name	Residence
H. K. Seligman	Tamaqua, Pa.
W. E. Fletcher	
Geo. P. Teel	Roslyn, Pa.
W. C. Manning	Wilkes-Barre, Pa.

Officers

Name	Office	Residence
H. K. Seligman	President	Tamaqua, Pa.
W. E. Fletcher	Secretary	Philadelphia, Pa.
W. E. Fletcher	Treasurer	Philadelphia, Pa.

IN WITNESS WHEREOF, we have hereunto set

our hands and affixed the seal of said corporation this 5th day of January, A. D. 1931.

(SIGNED) H. K. Seligman
President.

(SIGNED) W. E. Fletcher
Secretary and Treasurer

COPY

STATE OF PENNSYLVANIA :
: ss.
COUNTY OF PHILADELPHIA:

H. K. SELIGMAN, President, and W. E. FLETCHER, Secretary and Treasurer of Peerless Explosives Company, being duly sworn on their respective oaths depose and say that the foregoing Certificate signed by them is true.

Sworn to and subscribed :
before me this 5th day :
of January, A. D. 1931. :

(Signed) H. K. Seligman
President

(Signed) W. E. Fletcher
Secretary and Treasurer

(Signed) Elbert Williamson
Notary Public

My commission expires
March 7, 1931

(SEAL)

COPY

CONSENT TO DISSOLUTION
of
PEERLESS EXPLOSIVES COMPANY
By Unanimous Consent of the Stockholders

The undersigned, being the holders of all the outstanding voting stock of Peerless Explosives Company, a corporation organized and existing under the laws of the State of Delaware, having its principal office in the State of Delaware, in the City of Wilmington, County of New Castle, having consented and do hereby consent to the dissolution of said Peerless Explosives Company.

IN WITNESS WHEREOF, Peerless-Union Explosives Corporation has caused the execution of this Consent in its corporate name and on its behalf by its President, and its corporate seal duly attested by its Secretary to be hereunto affixed, and the individual stockholders have hereunto set their hands and seals this day of January, A. D. 1931.

Name	No. of Shares
PEERLESS-UNION EXPLOSIVES CORPORATION	
By H. K. Seligman, President	14,995
(SEAL)	
Attest W. E. Fletcher, Secretary	
H. K. Seligman (SEAL)	Two

W. E. Fletcher	(SEAL)	One
G. P. Teel	(SEAL)	One
W. C. Manning	(SEAL)	One

STATE OF PENNSYLVANIA :
: ss
COUNTY OF PHILADELPHIA :

H. K. SELIGMAN and W. E. FLETCHER, being respectively President and Secretary and Treasurer of Peerless Explosives Company, being duly sworn, on oath, depose and say that the foregoing Certificate giving the names and residences of the officers and directors of said corporation, by them signed, is true and correct, and that the Consent to the dissolution of said corporation has been signed by the holders of all of the outstanding voting stock of the said corporation.

Sworn to and subscribed :
before me this 5th day :
of January, A. D. 1931. :

(Signed) H. K. Seligman
President

(Signed) W. E. Fletcher
Secretary and Treasurer

(Signed) Elbert Williamson
Notary Public

(SEAL)

My commission expires
March 7, 1931

EXHIBIT "M"

October 7, 1930

Received from PEERLESS - UNION EXPLOSIVES CORPORATION Checks Nos. 24 and 25 to the order of the undersigned, for Twenty-five Thousand, Three Hundred Six and 67/100 Dollars; Certificates for 2720.08 shares of the Common Stock of said corporation numbered as follows:

Certificates		Scrip	
No.	Shares	No.	Shares
440	9	437	.08
442	500		
443	500		
444	500		
445	500		
446	500		
447	200		
462	11		
TOTAL	2720.08		

Temporary Receipts numbered from P20 to P-26 inclusive, for 625 shares of the Preferred Stock of Atlas Powder Company; and Temporary receipt C-16 for 1344 shares of the Common Stock of said Atlas Powder Company.

Raymond I. Bashford (signed)
Raymond I. Bashford

EXHIBIT "N"

Statement Showing Holdings of Record October 7, 1930 of Peerless Explosives Company Common Stock and Actual Exchanges on which Settlement were Based

Peerless Explosives Co. Common Stock

	Holdings of Record Oct. 7, 1930	Exchanges on Which Settlements Were Based	Excess of Exchange over Holdings of Record
	Shares	Shares	
F. K. Gregory	1	1	
M. L. Gregory	1	1	
N. C. Burke	1	1	
Maude Morris	10	10	
Geo. C. Dissette	25	25	
Cora D. Wilson	25	25	
J. Randall Ward	29	57.14	28.14
J. E. Slusser	10	42.86	32.86
F. E. Sorensen	25	35.72	10.72
George P. Teel	5	28.57	23.57
V. J. Walters	20	28.57	8.57
T. W. Dickey	26	26	
Harry K. Gregory	96	96	
E. E. Locklin	236	236	
C. S. Simonsen	155	155	
W. C. Manning	153	128	25
Eugene Frost	2504	2534.38	30.38
R. I. Bashford	2541	2534.38	6.62
James Henry Bashford	2		2
Margaret A. Bashford	2		2
Alice E. Bashford	2		2

Nellie Ester Bashford	2		*2*
R. I. Bashford, Jr.	2		*2*
Robert Teel	58		*58*
E. R. Day	2557	2534.38	*22.62*
N. P. Kinback	10		*10*
Dora Ricker	2		*2*
	8500	8500	

(Note: Italic figures indicate figures typed in red on original copy.)

EXHIBIT "O"

C

Name of Record Holder of Peerless Stock	No. Shares of Peerless Preferred	No. Shares of Peerless Common	Received in Exchange: Cash	Atlas Preferred	Atlas Common	Peerless Union Common
F. K. Gregory		1	70.00			1.05
M. S. Gregory		1	70.00			1.05
N. C. Burke		1	70.00			1.05
Maude Morris		10	700.00			10.59
Geo. C. Dissette		25	1,750.00			26.48
Cora D. Wilson (Mrs. M. K.)		25	1,750.00			26.48
J. R. Ward		29	1,400.00	10	24	30.70
J. E. Slusser		10	3,000.00			10.59
F. E. Sorensen		25	2,500.00			26.48
Geo. P. Teel		5	2,000.00			5.30
Robert Teel		58				
V. R. Walters		20	2,000.00			21.18
T. W. Dickey		26	1,820.00			27.53

Harry K. Gregory	96	3,520.00	16	24	101.66
E. E. Locklin	236	11,720.00	48		249.92
C. S. Simonsen	155	1,250.00	85	16½	164.15
W. C. Manning	153	8,960.00			135.55
Eugene Frost	2,504	14,206.66	816	1,224	2,720.08
Raymond I. Bashford	2,541)				
Margaret L. Bashford	2)				
Alice E. Bashford	2)				
Nellie Ester Bashford	2)	25,306.67	625	1,344	2,720.08
R. I. Bashford, Jr.	2)				
James Henry Bashford	2)				
E. R. Day	2,557)				
N. P. Kinback (for E. R. Day Ctf. #101)	10)	42,906.67	625	1,080	2,720.08
Dora Ricker (for E. R. Day)	2)				
Pfd. Shs.					

Total Majority Holders		8,500	$125,000.00	2,225	3,712½	9,000.00
Holders per original list of First National Bank of Tamaqua.	16,128**	5,788	403,200.00			6,447.79
Total Peerless Exchanged on Oct. 7, 1930	16,128	14,288	$528,200.00	2,225	3,712½	15,447.79

(*) These shares held in Teel's name for a/c of others not specified as majority group turned over en bloc the 8,500 shs. with instructions to make distributions herein set forth.

(**) There is included in this figure the 28 shares of Preferred Stock of the Peerless Explosives Company owned by Petitioner, Raymond I. Bashford.

EXHIBIT "P"

Name of Record Holder of Union Stock	No. of Shares Held Union Preferred	Union Common	Cash	Received Atlas Preferred	Atlas Common	Peerless Union Common
MAJORITY CONTRACTOR:						
J. Edgar Long	2,198	2,824		3,880½	5,000	9,302
MINORITY DIRECT EXCHANGE:						
Anna S. (Mrs. J. E.) Long	232½	92		232½		208.25
Total turned in direct at closing	2,430½	2,916		4,093	5,000	9,510.25
THROUGH FIRST NATIONAL BANK OF TAMAQUA						
H. G. Ashcroft	36½	15	$ 3,650.00			33.25

Homer Forinash	7	5	700.00	6.50
(?) J. Sandridge	6½	2½	650.00	5.75
(?). W. Stuber	1		100.00	.50
Thomas M. Philibin	4		400.00	2.00
H. H. Hunter	15	6	1,500.00	13.50
H. Lasey	8	5	800.00	7.00
Kirk King	4		400.00	2.00
C. M. Hochheimer	6½	10	650.00	23.25
H. B. Cooper Estate	184½		18,450.00	92.50
J. W. Harrison	7½	3	750.00	6.75
F. S. Ambrose	2½	1	250.00	2.25
E. H. Shaffer	13	5	1,300.00	11.50
Chas. B. Johnson	100	433	10,000.00	841.75
(?) C. Huston	37½	17½	3,750.00	36.25
P. E. Reutter	51	399½	5,100.00	425.00
J. Montgomery	13½	5	1,350.00	11.75
J. A. Broderick	9½	4	950.00	8.75
T. N. Larkin	5		500.00	2.50
F. L. Shaffer	5	4	500.00	6.50

J. A. Farr	6	2	600.00	5.00
L. Schen	20	7½	2,000.00	17.50
E. M. Schen	52½	19½	5,250.00	45.75
T. D. Thomas	2½	1	250.00	2.25
D. A. McDevitt	14	5½	1,400.00	12.60
A. V. Morgan	9½	4	950.00	8.75
(?) F. Doyle	2½	1	250.00	2.25
C. J. Boner	16½	7	1,650.00	15.25
D. J. O'Shea	37	10	3,700.00	28.50
Mary Whitesell	2½	1	250.00	2.25
L. S. Moffett (Mrs.)	2½	1	250.00	2.25
J. N. Starrett	55	26½	5,500.00	54.00
S. Moffett	1	½	100.00	1.00
J. E. McCombs	3½		350.00	1.75
James McCombs	1		100.00	.50
S. R. Bentley	26	10	2,600.00	23.00
J. E. W. Atchison	6½	3	650.00	6.25
Geo. P. Jones	3		300.00	1.50
J. Hawes	1		100.00	.50

G. P. Jones	10	67½	1,000.00			72.50
Forward	790	1,078½	$79,000.00			1,842.25
Forward	2,430½	2,916		4,093	5,000	9,510.25

Name of Record Holder of Union Stock	No of Shares Held Union Preferred	Union Common	Cash	Received Atlas Preferred	Atlas Common	Peerless Union Common
THROUGH FIRST NATIONAL BANK OF TAMAQUA (cont'd.)						
Forward	2,403½	2,916		4,093	5,000	9,510.25
Forward	790	1,078½	$ 79,000.00			1,842.25
(?) H. Howes Estate	6½	2½	650.00			5.75
F. C. Slee	13½	5	1,350.00			11.75
G. M. Hochheimer	20		2,000.00			
J. T. Stoddard	13½	5	1,350.00			11.75
G. P. Jones	1		100.00			.50

F. H. Rogers	11½	5	1,150.00			10.75
M. J. & S. Rogers	1	1	100.00			1.50
E. C. Stowell	1		100.00			.50
E. M. Perkins	1		100.00			.50
Mrs. J. M. Shinn	2½	1	250.00			2.25
J. W. Jones	8		800.00			4.00
(?) D. Weaver	67½	25	17,000.00			200.00
(?). A. Washington		1				1.00
J. W. Howard		1				1.00
P. W. Bailey		1				1.00
C. P. Boughner		1				1.00
C. H. Harris		1				1.00
Total Tamaqua Bank	937	1,128	$103,950.00	4,093	5,000	2,096.50
Grand Total	3,367½	4,044	$103,950.00			11,606.75

Barrow, Wade, Guthrie & Co. Schedule C

RAYMOND I. BASHFORD

260 South Broad Street, Philadelphia, Pa.

PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC.

Stocks		Cost	Proceeds	Net Profit
10	General Motors	$ 427.00√	$ 437.96√	$ 10.96
10	Radio-Keith-Orpheum	369.50√	447.60√	78.10
10	Atlas Powder Co.	803.25√	907.60√	104.35
10	Gillette Safety Razor	840.75√	862.60√	21.85
100	Armour & Co. "B"	345.00√	366.50√	21.50
20	Radio-Keith-Orpheum	763.00√	862.70√	99.70
28	Peerless Explosives Pfd.	650.00√	700.00√	50.00
		$4,198.50	$4,584.96	386.46√

Pursuant to a plan of reorganization, received for Peerless Explosives Co. Common Stock, securities of a corporation party to the reorgan-

ization and cash. Since the amount of cash received is less than the profit on the entire transaction, in accordance with the limitation of Sec. 112 (c) of the Revenue Act of 1928, the amount of the cash received is here reported as income 25,306.67

Total Profit on Securities ..... $ 25,693.13

A-3

EXHIBIT "S"

ATLAS POWDER COMPANY

1930		Shares Traded in	High	Low	Close	Closing Bid	Price Asked
Sept	6 Com.	1700	75¾	73	75½	75½	75¾
	Pfd.					101½	102½
Sept.	7			Sunday			
	8 Com.	1000	76⅞	74¾	74¾	74¾	76
	Pfd.	10	102½	102½	102½	101¾	102½
	9 Com.	200	75⅞	75¾	75⅞	75	75⅞
	Pfd.					101¼	102½
	10 Com.					73	75
	Pfd			No Sales		101¼	102½
	11 Com.					70	74¾
	Pfd.	20	101¼	101¼	101¼	101¼	102½
	12 Com.					70	74½
	Pfd.	20	102½	102½	102½	101¼	102½
	13 Com.			No Sales		70¼	74¼
	Pfd.					101¼	102½
	14			Sunday			
	15 Com.					70	74
	Pfd			No Sales		101¼	102½
	16 Com.	400	72⅛	70¼	72⅛	70	72⅛
	Pfd.					101¼	102½
	17 Com.	100	71	71	71	71	75½
	Pfd.					101¼	102½
	18 Com.					71	74½
	Pfd.			No Sales		101¼	102½
	19 Com.	300	71	70⅛	70⅛	70½	74½
	Pfd.	10	102½	102½	102½	101¾	102½
	20 Com.					70½	73½
	Pfd.	40	103½	102½	103½	101¾	105
	21			Sunday			
	22 Com.	100	70	70	70	70	72
	Pfd.					101¾	105
	23 Com.			No Sales		65	71
	Pfd.					101¾	103
	24 Com.	100	70	70	70	68	69⅛
	Pfd.					101¾	102⅝
Sept.	25 Com.					65	70
	Pfd.			No Sales		102	103
	26 Com.					65	70
	Pfd.			No Sales		101¾	103
	27 Com.	100	65¼	65¼	65¼	65	70
	Pfd.					101¾	103
	28			Sunday			
	29 Com.	400	65⅛	65	65	65	68⅛
	Pfd.	30	100½	100½	100½	103½	105
	30 Com.	1500	65⅛	63¼	63¼	63	64
	Pfd.	30	102½	102½	102½	101½	102½

ATLAS POWDER COMPANY

1930	Shares Traded in	High	Low	Close	Closing Bid	Price Asked
Oct. 1 Com.	200	65	65	65	63¼	65½
Pfd.	10	101½	101½	101½	101½	102½
2 Com.	100	65	65	65	65	65½
Pfd.					101¾	102½
3 Com.	100	66	66	66	64	66
Pfd.	10	101¼	101¼	101¼	101¼	102¼
4 Com.					65	69½
Pfd.		No Sales			101¼	102¼
5		Sunday				
6 Com.					63	65
Pfd.	10	101¼	101¼	101¼	100½	102¼
7 Com.	100	64	64	64	64	74½
Pfd.					100½	102½
8 Com.	1000	67¼	65	67¼	66	68½
Pfd.					101¾	102½
9 Com.	400	64	63	63	63¼	65
Pfd.					101¾	102½
10 Com.	100	62⅛	62⅛	62⅛	64	68
Pfd.	40	102½	101¾	101¾	101¾	102½
11 Com.	500	65	65	65	65	67⅜
Pfd.					101¾	102½
12		Sunday				
13		Columbus Day				
14 Com.					63	65
Pfd.	20	101¾	100½	100½	100½	101¾
Oct. 15 Com.					62	65
Pfd.		No Sales			101¼	101¾
16 Com.					63	65
Pfd.		No Sales			101¼	101¾
17 Com.		No Sales			63	65
Pfd.					101¼	101¾
18 Com.	2100	62	56¼	56¼	56¼	62½
Pfd.					101¼	101¾
19		Sunday				
20 Com.					57	61
Pfd.	50	99¾	99¾	99¾	99	100¾
21 Com.	500	57½	56⅝	57	57	60
Pfd.	10	99½	99½	99½	—	—
22 Com.	700	56½	55	55	55	56
Pfd.	10	100⅞	100⅞	100⅞	100	101
23 Com.	200	59¾	54	59¾	57	59¾
Pfd.					100	101
24 Com.					55	60
Pfd.	220	100⅛	100	100	100	100½
25 Com.					55½	60
Pfd.		No Sales			99	100
26		Sunday				
27 Com.	500	57½	57½	57½	55½	60
Pfd.	30	101	100	101	99	100
28 Com.					55	60
Pfd.	60	100½	100	100	100	101

ATLAS POWDER COMPANY

1930		Shares Traded in	High	Low	Close	Closing Bid	Price Asked
29	Com.					56	59½
	Pfd.	50	100	100	100	100	101
30	Com.					55	59⅝
	Pfd.			No Sales		100	101
31	Com.	200	58	58	58	55	59⅝
	Pfd.	50	100	100	100	100	101
Nov. 1	Com.			No Sales		55	59
	Pfd.					100	100¼
2				Sunday			
Nov. 3	Com.					56¼	58
	Pfd.	20	100¼	100¼	100¼	100	100¼
4				Election Day			
5	Com.						
	Pfd.			No Sales			
6	Com.	100	55	55	55	55	57
	Pfd.					100	100¼
7	Com.	300	53	52	52		
	Pfd.	120	100¼	100	100¼	100	100¼

OPINION

UNITED STATES BOARD OF TAX APPEALS

RAYMOND I. BASHFORD, PETITIONER, v. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

Docket No. 71565. Promulgated September 10, 1935.

Where the petitioner under a plan of reorganization exchanged 2,534.38 shares of the common stock of the Peerless Explosives Co. for 1,344 shares of common stock and 625 shares of the preferred stock of the Atlas Powder Co., 2,720.08 shares of common stock of the Peerless-Union Explosives Corporation, and $25,306.67 in cash, the market value of the Atlas Powder Co. common and preferred stock was not taxable as income, as the reorganization was a tax-free transaction with the exception of the cash involved.

Walter G. Moyle, Esq., for the petitioner.
W. Frank Gibbs, Esq., for the respondent.

OPINION.

SMITH: This case involves a deficiency in income tax of $35,941.63 for the calendar year 1930, and depends for its solution upon the question of whether there was a reorganization of three corporations into one, and whether another corporation, the Atlas Powder Co., which was not reorganized, was a party to the reorganization.

The evidence consists of a stipulation of facts, including a number of exhibits, and the oral testimony of two witnesses.

Prior to October 7, 1930, the Peerless Explosives Co. was a Delaware corporation, engaged in the manufacture and sale of explosives. There were issued and outstanding on October 7, 1930, 17,672 shares of preferred stock of a par value of $25 per share and 14,890 shares of common stock of no par value. On the same date petitioner was the owner of 2,541 shares of common stock of the Peerless Explosives Co. and 28 shares of its preferred stock. This company will hereinafter be referred to as Peerless.

On and prior to October 7, 1930, the Union Explosives Co. was a West Virginia corporation, engaged in the manufacture and sale of explosives. It had outstanding 3,367½ shares of preferred stock of a par value of $100 per share and 4,044 shares of common of no par value. This corporation will be referred to hereinafter as Union.

At the same time the Black Diamond Powder Co. was a corporation organized and existing under the laws of Pennsylvania, with an issue of 1,584 shares of common stock of the par value of $100 per share, all of which was owned by Peerless. This company will be referred to hereinafter as Black Diamond. It was engaged in the powder business.

On and prior to October 7, 1930, the Atlas Powder Co. was a corporation organized and existing under the laws of Delaware, engaged in the business of manufacturing and selling high explosives and related products. On October 7, 1930, there were is-

sued and outstanding 261,438¾ shares of common stock of no par value, including treasury stock, and 96,318 shares of preferred stock of $100 par value. Hereinafter this company will be referred to as Atlas.

On or about September 22, 1930, the Peerless-Union Explosives Corporation was organized under the laws of Delaware, and on or about October 6, 1930, its capital stock was increased from 500 shares of preferred stock of $100 par value and 500 shares of common stock without par value, to 50,000 shares of preferred stock of $100 par value and 100,000 shares of common stock of no par value. Hereinafter this company will be referred to as the new company.

Peerless, Union and Black Diamond were all engaged in the same general line of manufacture and sale of high explosives as was Atlas. Peerless, Union and Black Diamond were at the same time business competitors and customers of Atlas, since they purchased large quantities of chemicals used in the manufacture of their products from Atlas.

The situation of rivalry was not satisfactory to Atlas, which desired to remove the possible dangerous competition and to acquire for itself the business of these competitors. Early in 1930 Leland Lyon, president of Atlas, conceived the idea of reorganizing Peerless, Union and Black Diamond, and consolidating or merging them into a new company, which would be controlled by Atlas.

It was desired that the identity of Atlas in the transactions should not be known at the inception of the negotiations, so Lyon summoned to his of-

fice at Wilmington, Delaware, H. K. Seligman and W. E. Fletcher for consultation and formation of a plan of action. Both of these men were experienced in the powder business and had formerly been connected with Atlas, and were personally acquainted with many of the stockholders of Peerless and Union. It was for these reasons that they were selected by Atlas to conduct the preliminary negotiations. They were instructed that Atlas did not desire to purchase either the assets or stocks of Peerless, Union or Black Diamond, but to reorganize them into a new company by the exchange of stocks, which new company would be controlled by Atlas. It was desired that the stockholders of the old companies should go along with them into the new.

The preliminary negotiations with the majority stockholders of Peerless and Union were conducted by Atlas through its agents, H. K. Seligman and W. E. Fletcher, without disclosing the identity of Atlas until it had secured from said stockholders their oral assurances that they would exchange their stock in Peerless and Union substantially on the basis of the written contracts finally entered into conditionally on the ability of Seligman and Fletcher to secure the participation in the plan of substantially all of the remaining stockholders through option agreements. It was made plain from the beginning, however, that a strong financial interest was represented and would participate in the plan to the extent of furnishing necessary funds, and that Seligman and Fletcher and the principal stockholders of Peerless and Union would be officers in the new company.

Omitting unnecessary details, the main features

of the plan were that Peerless, Union and Black Diamond were to be consolidated into the new company, Peerless-Union Explosives Corporation, that the stockholders of the old companies would receive for their stock in the old companies stock in the new company, stock in Atlas and some cash. Atlas on its part was to furnish the new company with sufficient cash and sufficient shares of its own common and preferred stock to complete the transaction. In return it was to receive sufficient common and preferred stock in the new company to assure its control.

As a preliminary step in the proceedings Atlas caused the incorporation of the new company under the laws of Delaware on September 22, 1930, for the purpose of acquiring the business and assets of Peerless, Union and Black Diamond, and subscribed to all of its original issue of common and preferred stock, being 10 shares of common and 10 shares of preferred, for which it paid $1,001, of which $1,000 was for the preferred stock and $1 for the common stock. This stock was all issued to Atlas. Subsequently, on October 6, 1930, the capital stock of the new company was increased to 100,000 shares of common of no par value, and 50,000 shares of preferred of $100 par value.

On October 2, 1930, a special meeting of the board of directors of Atlas was held and upon motions duly adopted the actions of its executive officers in causing the formation of the new company for the purpose of acquiring the assets and business of Peerless, Union and Black Diamond, and the plan of reorganization were approved. The officers of Atlas were empowered and directed to invest in the capi-

tal stock of the new company up to an aggregate of 21,732 shares of the 6 percent cumulative preferred stock of the new company and 32,198 shares of its common stock, and in consideration therefor to deliver to the new company $960,560.25 in cash, 6,318 shares of Atlas preferred stock on the basis of $100 per share, and 8,712½ shares of Atlas common stock on a basis of $66.66-2/3 per share.

On October 7, 1930, the petitioner, Bashford, E. Frost of Philadelphia, and Edward R. Day of White Haven, Pennsylvania, as majority stockholders of Peerless, parties of the first part, and H. K. Seligman, and W. E. Fletcher, as promoters, parties of the second part, entered into a written contract by which the stockholders warranted, among other things, that they owned or controlled 8,500 shares of the common stock of Peerless. On their part the promoters warranted that the new company was a corporation organized under the laws of Delaware for the purpose of acquiring the assets of Peerless, Union and Black Diamond, subject to their several liabilities in accordance with the plan of reorganization. They further warranted that upon the acquisition of the assets of Peerless, Union and Black Diamond, the new company would have a working capital of at least $300,000, and an authorized capital of 150,000 shares represented by 50,000 shares of 6 percent cumulative preferred stock of the par value of $100 each and 100,000 shares of common stock of no par value, of which there would be outstanding 21,732 shares of preferred stock and 65,000 shares of common stock. The common stock carried voting rights, but the preferred stock could be voted only in case of default on the dividends.

Promoters further agreed that they would take such action as was necessary to liquidate Peerless, Union and Black Diamond, and transfer their assets to the new company. It was thereupon agreed that the stockholders should deliver to the promoters their 8,500 shares of common stock of Peerless in exchange for 9,000 shares of common stock of the new company, $125,000 cash, 2,225 shares of the cumulative preferred stock of Atlas, which should be accepted at the par value thereof and 3,712½ shares of common stock of Atlas, which should be accepted at a price of $66.66-2/3 per share.

As additional consideration for the exchange, the promoters agreed to cause the new company to reimburse the stockholders for any Federal income tax paid by them because of the transaction.

It was further agreed that the promoters would use their best efforts to exchange the outstanding preferred stock of Peerless, viz., 17,672 shares of the par value of $25 each for the sum of $25 each and an amount of common stock in the new company not to exceed 4,000 shares, and that they would use their best efforts to exchange the 6,390 shares of outstanding minority common stock of Peerless upon the basis of a one-half share of common stock of the new company for each share of Peerless common.

It was further agreed that the promoters would cause Atlas to underwrite 21,732 shares of the preferred stock and 32,198 shares of the common stock of the new company, and that the new company would have $300,000 of working capital. The stockholders agreed that upon the exchanges of stock

all officers of Peerless and Union would resign, and other provisions were made as to details to close the transaction on October 7, 1930.

On the same date, October 7, 1930, J. Edgar Long, as majority stockholder of Union, party of the first part, and H. K. Seligman and W. E. Fletcher, as promoters, parties of the second part, entered into a written contract containing practically the same warranties and agreements as contained in that relative to Peerless. By this contract it appeared that Union had issued and outstanding 3,367½ shares of preferred stock of $100 par value and 4,044 shares of common stock of no par value, and that Long was the owner of 2,198 shares of the preferred stock and 2,824 shares of the common stock. It was agreed that the stockholder should deliver to the promoters his 2,824 shares of Union common in exchange for 8,500 shares of common stock of the new company, and $333,333.33⅓ in common stock of Atlas (par value $100 per share) at a price of $66.66-2/3 per share, and $166,258.42 in preferred stock of Atlas at par.

It was also agreed that Long should deliver to the promoters 2,198 shares of preferred stock of Union in exchange for an equal amount of Atlas, preferred stock and 802 shares of the new company common.

The promoters also agreed to use their best efforts to cause the exchange of the remaining 1,169½ shares of Union preferred for $93,700 in cash, 232½ shares of Atlas preferred, and 585 shares of new company common, and that they would also use their best efforts to cause the exchange of the 1,220 outstanding minority shares of Union common on a

basis of one share of Union for one of the new company common.

Long agreed to enter the employ of the new company, and not to engage in competitive business for 10 years.

On the same day, October 7, 1930, the promoters, H. K. Seligman, and W. E. Fletcher, and the new company entered into a written contract in which it was recited that the promoters owned or controlled substantially all of the outstanding capital stock of Peerless and Union, and desired to exchange same with the new company pursuant to a certain plan of reorganization, and it was agreed that the promoters should exchange their holdings in Peerless and Union as follows: 16,128 shares of Peerless preferred, 14,288 shares of Peerless Common, 3,-367½ shares of Union preferred, and 4,044 shares of Union common for $632,150 in cash, 6,318 shares of Atlas preferred at par, 8,712½ shares of Atlas common at a price of $66.66-2/3 per share, and 32,145.79 shares of new company common. There were further agreements relative to the employment of stockholders in the old companies, and agreements to dissolve the old corporations, acquire their assets and assume their liabilities, and to reimburse stockholders for any income tax imposed upon them from the transaction. Also on October 7, 1930, separate agreements were entered into by petitioner, Eugene Frost and Edward R. Day with the new company and Atlas relative to the reimbursement of income tax imposed on the stockholders on account of the transfers.

Prior to October 7, 1930, the promoters had secured options on practically all of the minority

stockholdings in Peerless and Union on the terms stated in the contracts above mentioned. These options were exercised through the First National Bank of Tamaqua, Pennsylvania, which delivered to Peerless minority stockholders $403,200 and 6,447.79 shares of new company common in exchange for 16,128 shares of Peerless preferred and 5,788 shares of Peerless common. Union minority stockholders received $103,950 and 2,096.50 shares of common stock of the new company for 937 shares of Union preferred and 1,128 shares of Union common.

All of the transfers and exchanges were made as indicated by the above agreements. The assets of the three old corporations, Peerless, Union and Black Diamond, were transferred to the new company and the old companies were dissolved.

Upon the completion of the stock exchanges on October 7, 1930, the shareholdings in the new company were as follows:

	Shares	Shares	Percentage of total
Preferred stock	21,732	.....	
Owned by Atlas	.....	21,732	100%.
Common stock	64,252.54	.....	
Owned by Atlas	.....	37,198	57% plus.
Owned by former stockholders of Peerless and Union	.....	27,054.54	43% minus.

The question has been raised by the respondent as to the ownership of 5,000 shares of the new company common stock which were issued to Seligman and

Fletcher, 2,500 shares to each. Under the agreement which had been entered into between Seligman and Fletcher as promoters and the majority stockholders of Peerless and of Union, only 27,054.54 common shares of the new company were to be issued to such majority stockholders. Atlas contemplated that approximately 65,000 common shares of the new company should be issued. At a meeting of the directors of Atlas on October 2, 1930, a resolution was passed providing in part:

> FURTHER RESOLVED, that Atlas Powder Company, as the holder of all the stock of Peerless-Union Explosives Corporation, now outstanding, hereby consent to the issuance of Peerless-Union Explosives Corporation of said 21,732 shares of 6% Cumulative Preferred Stock and 32,198 shares of Common Stock, and further to the issuance by said Peerless-Union Explosives Corporation of such additional amount of its authorized Common Stock not exceeding, however, 5,500 shares to Harry K. Seligman and W. E. Fletcher, on account of such part of the purchase price payable to them in the course of the acquisition of the shares of Peerless Explosives Company, Black Diamond Powder Company, and Union Explosives Company, as is payable in the stock of said Peerless-Union Explosives Corporation.

It is the uncontradicted testimony of Lyon, the president of the Atlas Powder Co., and of W. E. Fletcher, that the 5,000 shares of stock in question were issued to Seligman and Fletcher to be held by them subject to future directions from the officers of the Atlas Powder Co. The certificates in

question were first turned over to the officers of Atlas and by such officers delivered to Seligman and Fletcher. The reason for the issuance of these shares to Seligman and Fletcher was for the purpose of making it appear that the Atlas Powder Co. was the stockholder of record of slightly less than a majority of the voting stock of the Peerless-Union Explosives Corporation. With respect to the certificate received by Fletcher he testified:

> Mr. Lyon or one of the officers gave it to me and he told me that it was being given to me, and he said it was being given to Mr. Seligman, too, in order to reduce the amount of Atlas holdings in this company for sales reasons, and they expected us to hold it, to be used for the interest of Atlas in any way that they cared us to use it, and we were perfectly willing to do it.

Several months later Seligman and Fletcher were told by the officers of the Atlas Powder Co. that the Atlas Powder Co. released any claim which it might have to the 5,000 shares of stock in question.

From the above quoted evidence we find as a fact that the 5,000 shares of Peerless-Union Explosives Corporation standing in the name of Seligman and Fletcher were beneficially owned by the Atlas Powder Co. until the Atlas Powder Co. waived its claim with respect to those shares.

In exchange for his 2,534.38 shares of the common stock of Peerless the petitioner, on October 7, 1930, received $25,306.67 cash, 625 shares of preferred and 1,344 shares of common stock of Atlas and 2,720.08 shares of common stock of the new company, Peerless-Union Explosives Corporation.

It is the contention of the respondent in this proceeding that these transactions constituted a sale and not a reorganization through the exchange of stock and that there was no plan of reorganization. The evidence does not support the respondent's contention that there was no plan of reorganization. From its inception that plan was that the corporations, Peerless, Black Diamond and Union should be consolidated into a new corporation of which Atlas should own a controlling interest; that at least the majority stockholders of the consolidating corporations should continue as stockholders of the new corporation to be formed. This plan was carried out. As said by the court in *Watts* v. *Commissioner*, 75 Fed. (2d) 981, "The plan of reorganization was the contract made and performed."

Section 112 of the Revenue Act of 1928 reads in part as follows:

RECOGNITION OF GAIN OR LOSS.

(a) *General rule.*—Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 111, shall be recognized, except as hereinafter provided in this section.

(b) *Exchanges solely in kind.*—

* * * * *

(3) STOCK FOR STOCK ON REORGANIZATION.—No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

* * * * *

(c) *Gain from exchanges not solely in kind.*—

(1) If an exchange would be within the provisions of subsection (b) (1), (2),(3), or (5) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

* * * * *

(i) *Definition of reorganization.*—As used in this section and sections 113 and 115—

(1) The term "reorganization" means (A) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation), or (B) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (C) a recapitalization, or (D) a mere change in identity, form, or place or organization, however effected.

(2) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in

the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

At the consummation of the plan of reorganization, the new company, the Peerless-Union Explosives Corporation was the owner of practically all of the stock and of all of the assets of the old corporations. This clearly establishes a reorganization and consolidation under section 112 (i) (1) (A) of the statute above quoted.

As to whether or not Atlas was a party to the reorganization, it may be said that the entire idea and plan of reorganization was conceived by Atlas; that it was in the line of Atlas' business; and that its promotion and execution were entrusted to its agents, Seligman and Fletcher under general instructions. The plan was developed and formed by Atlas and its agents; cash and its own stock necessary to the accomplishment of the transaction were furnished by Atlas; and it became the owner of the majority of the voting stock and of all of the preferred stock of the new company. In short, Atlas was the mainspring of the entire proceeding and without its participation there would have been no reorganization and consolidation into the new company.

The facts in this respect are quite similar to those in *Fifth Avenue Bank of New York, Executor*, 31 B. T. A. 945. We there held that the term "party to a reorganization" included other corporations than the one reorganized and that, where the corporation

is so intimately connected with the reorganization of other corporations that the reorganization depends on its efforts or support, then such corporation is a party to the reorganization although it is not reorganized itself. The facts in this case are even stronger for the petitioner than those in the above cited case in support of the proposition that Atlas was a "party to a reorganization" for here the evidence shows that Atlas acquired all of the preferred stock of the new company and 57 percent of the common stock, which unquestionably made it a party to the reorganization. See also *Tulsa Oxygen Co.*, 18 B. T. A. 1283; *First National Bank of Champlain, New York*, 21 B. T. A. 415.

In his notice of deficiency the respondent increased the amount of cash received by the petitioner by $700. At the hearing it was admitted by the respondent that this was erroneous. The error will be corrected upon settlement under Rule 50 of the Board's rules of practice.

In the computation of the deficiency the respondent fixed the market value of Atlas preferred stock at $100 per share and of Atlas common stock at $66.66-2/3 per share, being the value fixed by the parties in contracts of October 7, 1930. Petitioner contends that the fair market value of the common stock at the date of receipt by him, October 7, 1930, was only $64 per share, as shown by a sale of 100 shares of Atlas common on the New York Stock Exchange on that date. In view of the fact that the petitioner admits a taxable profit in 1930 equal to the full amount of cash received by him in 1930 from the transaction and of our conclusion that the shares of stock of Peerless-Union Explosives Cor-

poration and of Atlas Powder Co. were received by him in a nontaxable exchange under section 112, it is not necessary to determine the fair market value of the Atlas stock on the date in question.

Judgment will be entered under Rule 50.

(SEAL)

DECISION

Pursuant to the Board's opinion, promulgated September 10, 1935, the respondent herein having on October 2, 1935, filed a notice of settlement and recomputation of tax, and the petitioner having on October 10, 1935, filed an acquiescence in said recomputation, now, therefore, it is

ORDERED AND DECIDED: That there is no deficiency in income tax for the year 1930.

(s) CHARLES P. SMITH,
Member.

ENTERED
OCT. 14, 1935.

(SEAL)

PETITION FOR REVIEW AND ASSIGNMENTS OF ERROR

To the Honorable Judges of the Circuit Court of Appeals for the Third Circuit:

NOW COMES Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Frank J. Wideman, Assistant Attorney General and Herman Oliphant, General Counsel for the Department of the Treasury, and W. Frank Gibbs, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

That the petitioner on review is the duly appointed and accredited Commissioner of Internal Revenue, holding his office by virtue of the laws of the United States; that the respondent herein, Raymond I. Bashford, filed his income tax return for the calendar year 1930 in the Office of the United States Collector of Internal Revenue for the First District of Pennsylvania, which such Office is located at Philadelphia, Pennsylvania, and was at the time of said filing, and still is, within the jurisdiction of the United States Circuit Court of Appeals for the Third Circuit.

II.

The nature of the controversy is as follows, to wit: The Commissioner of Internal Revenue deter-

mined a deficiency in income tax against the above-named respondent on review, Raymond I. Bashford, for the calendar year 1930 in the amount of $35,941.63 and on March 1, 1933 in accordance with Section 272 of the Revenue Act of 1928 sent to the taxpayer, respondent herein, by registered mail, a notice of said deficiency for the calendar year 1930.

On April 27, 1933, the taxpayer filed with the United States Board of Tax Appeals his petition whereby he appealed from the said notice of deficiency for the year 1930 to the said Board. The appeal bears Docket No. 71565. The cause was heard on December 10, 1934 and on September 10, 1935 the Board promulgated its opinion, which is reported in 33 B. T. A. No. 3, and decided the controversy in favor of the taxpayer. A final order of the Board, based thereon, was entered on October 14, 1935, and ordered and decided that there is no deficiency for the year 1930.

The questions presented are:

(1) Was the exchange by the taxpayer in 1930 of his stock of Peerless Explosives Company for cash, preferred and common stock of the Atlas Powder Company and common stock of Peerless-Union Explosives Corporation (the new company) made pursuant to a nontaxable reorganization and (2) granting the exchange was made pursuant to a nontaxable reorganization, was Atlas Powder Company a party to said reorganization?

During the early part of the year 1930, the President of Atlas Powder Company engaged Messrs. Fletcher and Seligman, two former employees of

the Atlas Powder Company to contact stockholders of the Peerless Explosives Company and the Union Explosives Company for the purpose of determining whether said stockholders would be interested in disposing of their holdings in said corporations.

These gentlemen did not divulge to the stockholders just whom they represented except to say that they represented a large corporation with responsible financial backing, nor did they offer a definite plan, either in the nature of a reorganization or a sale to the stockholders. Messrs. Fletcher and Seligman did secure options from the stockholders wherein said stockholders agreed to dispose of their holdings.

On September 22, 1930 a new corporation, the Peerless-Union Explosives Corporation, was organized and the Atlas Powder Company acquired all of its capital stock consisting of 10 shares of common and 10 shares of preferred stock, for which Atlas paid $1,1001.00. Some time subsequent to September 22, 1930 the original capital stock of the new company was increased and on October 2, 1930 the officers of Atlas were empowered and directed to invest in capital stock of the new company to an aggregate of 27,732 shares of preferred stock and 32,198 shares of common stock, and in consideration therefor to deliver to the new company $960,560.25 in cash, 6318 shares of Atlas preferred stock on a basis of $100 per share and 8712½ shares of common stock of Atlas on a basis of $66.66-2/3 per share. The officers of Atlas made the investment as directed.

On October 7, 1930 the taxpayer was the owner

of 2,534.38 shares of common stock of the Peerless Explosives Company, which he exchanged for $25,006.67 cash, 625 shares of preferred stock and 1,344 shares of common stock of the Atlas Powder Company and 2,720.08 shares of common stock of the new company, Peerless-Union Explosives Corporation. The taxpayer included as income on his income tax return filed for the year 1930 the amount of cash received on the exchange, namely, $25,006.67. The Commissioner, in computing the taxpayer's income for the year 1930 included, in addition to the cash received, the fair market value of the preferred and common stock of the Atlas Powder Company received on the exchange in the respective amounts of $62,500.00 and $89,600.00, holding that said stock constituted "other property" under Section 112 (c) (1) of the Revenue Act of 1928.

At the hearing before the Board the petitioner herein took the position (1) that there was no statutory reorganization involved in the transaction but rather a sale and (2), should the Board find that Peerless Explosives, the Union Explosives Company and the Peerless-Union Explosives Corporation did indulge in a statutory reorganization that Atlas Powder Company was not a party to said reorganization.

On or about October 7, 1930 Peerless-Union Explosives Corporation issued to Messrs. Fletcher and Seligman each 2500 shares of stock in said company. The Board found that the shares so issued totalling 5,000 were in fact owned by the Atlas Powder Company. Without such holding said Atlas Powder Company would not be in control of the voting stock of the new company.

The Board held that the transaction here involved was a nontaxable exchange made pursuant to a plan of reorganization and that Atlas Powder Company was a party to the same. With this holding it was not necessary for the Board to find the fair market value of the preferred and common stock of Atlas Powder Company at the date of exchange received by the taxpayer.

III.

The petitioner herein being aggrieved by the findings of fact and conclusions of law made by the Board of Tax Appeals, and injured thereby, desires to obtain a review of said findings of fact, conclusions of law, order and decision by the United States Circuit Court of Appeals for the Third Circuit, and as reasons for such review alleges that the Board committed the following errors:

(1) The Board erred as a matter of law in holding that the transaction whereby Bashford exchanged his common stock of the Peerless Explosives Company for cash, common and preferred stock of the Atlas Powder Company and common stock of the Peerless-Union Explosives Corporation was made pursuant to a plan of reorganization.

(2) The Board erred as a matter of law in failing to find that the aforesaid exchange constituted a sale.

(3) The Board erred as a matter of law in holding that the Atlas Powder Company was a party to a reorganization.

(4) The Board erred in failing to find that the

Atlas Powder Company was not a party to the reorganization.

(5) The Board erred in failing to find that the fair market value of preferred and common stock of Atlas Powder Company received by respondent in the exchange constituted "other property" and was taxable income.

(6) The Board erred in holding that the Atlas Powder Company was the actual owner of 5,000 shares of common stock of the Peerless-Union Explosives Corporation which were issued by said corporation to Messrs. Seligman and Fletcher.

(7) The Board erred in failing and refusing to find that the aforesaid 5,000 shares of common stock of the Peerless-Union Explosives Corporation were in fact and in law owned by Messrs. Seligman and Fletcher, of which 2,500 shares were issued to each respectively.

(8) The Board erred in failing and refusing to find and determine that respondent, Bashford, owed a deficiency in Federal income tax for the year 1930 in the amount of $35,941.63, except in so far as the error admitted by petitioner herein in the proceedings before the Board of Tax Appeals, wherein petitioner herein admitted the amount of cash received by Bashford was $700.00 less than the amount shown in the notice of deficiency.

(9) The Board erred in determining that respondent, Bashford, owed no deficiency in Federal income tax for the year 1930.

WHEREFORE, the Commissioner petitions that

the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Third Circuit, that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Signed) FRANK J. WIDEMAN,
Assistant Attorney General.

(Signed) HERMAN OLIPHANT,
General Counsel for the Department of the Treasury.

OF COUNSEL:

W. FRANK GIBBS,
Special Attorney,
Bureau of Internal Revenue.

United States of America,
District of Columbia, ss:

W. Frank Gibbs, being duly sworn, says that he is a Special Attorney for the Bureau of Internal Revenue, and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge except as to the matters therein alleged on information and belief, and as to these he believes it to be true.

(Signed) W. FRANK GIBBS.

Sworn and subscribed to before me this 4th day of January, 1936.

(Signed) GEORGE W. KRIES,
Notary Public.

My commission expires Nov. 16, 1937.

NOTICE OF FILING PETITION FOR REVIEW

To:

Mr. Raymond I. Bashford,
C/o The Atlas Powder Company,
Wilmington, Delaware.

You are hereby notified that the Commissioner of Internal Revenue did, on the 6th day of January, 1936, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Third Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 11th day of January, 1936.

HERMAN OLIPHANT
General Counsel for the Department of the Treasury.

Personal service of the above and foregoing no-

tice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this 13 day of January, 1936.

(Signed) RAYMOND I. BASHFORD,
Respondent on Review.

NOTICE OF FILING PETITION FOR REVIEW

To:
Mr. Raymond I. Bashford,
260 South Broad Street,
Philadelphia, Pa.

Mr. Walter G. Moyle,
1109 Earle Building,
Washington, D. C.

You are hereby notified that the Commissioner of Internal Revenue did, on the 6th day of January, 1936, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Third Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 6th day of January, 1936.

HERMAN OLIPHANT
General Counsel for the Department of the Treasury.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this sixth day of January, 1936.

(Signed) RAYMOND I. BASHFORD,
Respondent on Review.

WALTER G. MOYLE,
Attorney for Respondent on Review.

STATEMENT OF EVIDENCE

The following is a statement of evidence in narrative form in the above-entitled cause. This cause came on for hearing before the Honorable Charles P. Smith, Member of the Board of Tax Appeals, on December 10, 1934, at Washington, D. C.

At the aforesaid hearing the parties had entered into a stipulation of the facts and the stipulation, together with all exhibits, was offered in evidence and received by the Board. After the receipt of the stipulation, the following took place in the hearing:

MR. MOYLE:

The stipulation just received is entered into with the following addition, agreed to between counsel:

"Paragraph XXIX and XXXV thereof refers to the number of shares of Peerless-Union issued in connection with the acquisition by Peerless-Union of the outstanding minority of Peerless Common and

Preferred Stock. It is agreed that the figure of 673.27 of Peerless-Union Stock in Paragraph XXXV included the figure 301 of common stock of Peerless-Union referred to in the latter part of Paragraph XXIX. The difference between these figures is the amount of Peerless-Union Stock used in the payment of accrued dividends in the 1544 shares of Peerless Preferred stock included in this outstanding minority."

THE MEMBER:

Does that stipulation amend the petition?

MR. GIBBS:

That amends the stipulation. There was a manifest error in the stipulation or something that needed the explaining because they were at variance. This stipulation is to take care of that variance.

MR. MOYLE:

I would like to call Mr. Lyon to the stand.

Thereupon, to sustain the issues raised in the petition, Leland Lyon was called as a witness by and on behalf of the petitioner and having been first duly sworn, testified in substance as follows:

Direct Examination

I, Leland Lyon, am President of the Atlas Powder Company of Wilmington, Delaware, having held that position since 1927; that the Atlas Powder Company is engaged in the manufacture, distribution and sale of high explosives, blasting supplies and chemicals, operating quite generally throughout the United States, and had for a number of years prior to October, 1930 sold blasting supplies to the Peerless Explosives Company and the Union Explosives Company averaging for several years from 1.6%

to 3.3% of total sales and as high as 15% on blasting and chemical sales; that I have known both W. E. Fletcher and H. K. Seligman since 1913; that W. E. Fletcher had been employed by the Atlas Powder Company from 1913 to 1927 when he retired from that company; that he (Fletcher) had held various positions from Superintendent of the plant to Assistant General Manager of the High Explosive Operating Department; that H. K. Seligman was engaged in the wholesale hardware business and the sale of mine supplies at Tamaqua, Pennsylvania, operating under the name of Seligman and Company; that the Atlas Powder Company had purchased goods continuously from Seligman and Company from 1913 to date; Seligman had been the agent for Atlas Powder Company in the sale of explosives in the State of Pennsylvania.

In January 1930, several of the officers of the Atlas Powder Company including myself conceived the idea which later resulted in the formation of the Peerless-Union Corporation, which company was incorporated under the laws of Delaware on September 22, 1930. The idea conceived by the officers was to have the new company take over the Peerless Explosives Company, the Union Explosives Company and the Black Diamond Powder Company; that they believed it would be better instead of carrying on the negotiations in the name of the Atlas Powder Company to conduct the matter by the use of intermediaries, so Messrs. Fletcher and Seligman were engaged to carry on the negotiations. These negotiations were conducted by Seligman and Fletcher at the direction of the officers of the Atlas Powder Company and the negotiations culminated in this plan of reorganization on October 7, 1930 and

that the subsequent actions of Fletcher and Seligman were solely for the account of Atlas; that I told Messrs. Fletcher and Seligman if the plan of reorganization should be completed, they were to be officers in the Peerless-Union Explosives Corporation, Mr. Seligman to be President and Treasurer and Mr. Fletcher, Vice President and Secretary. After October 7, 1930 when the plan was completed they were made President and Vice President of the Peerless-Union Explosives Corporation and also directors; that Atlas Powder Company being in a dominating position elected three directors of the five of the new corporation, the three being Seligman, Fletcher and a man by the name of Pollock from the Atlas Powder Company's Offices at Wilmington, Delaware, who was a director of the high explosives department.

That Fletcher and Seligman received no compensation for their services up to October 7, 1930 but immediately after October 7 when they were elected officers of the Peerless-Union Explosives Corporation they received a salary and there was also placed in their name certain shares of the common stock of the Peerless-Union Explosives Corporation; that the placing of said shares in their names was in no sense compensations but that as they were accepting these new positions Atlas Powder Company felt it was highly desirable to have some stock in their names. That the plan arrived at in the conference with Fletcher and Seligman was that Peerless-Union was formed as a subsidiary of Atlas, which furnished all the cash and some 6,000 shares of its own preferred stock and 8,000 shares of common stock in making the new corporation possible; that all the negotiations with the stockholders of the old com-

panies were conducted through Fletcher and Seligman, who were representing the Atlas Powder Company in all the contracts which were entered into, the same being Exhibits C, D and E of the stipulation.

Q. Will you state why Atlas Powder Company was not disclosed as the principal in those original contracts and exchanges?

A. We felt that it was much better to deal with Messrs. Seligman and Fletcher as intermediaries rather than to disclose to the old Peerless Company and the old Union Company stockholders who were really the principals in this transaction.

Q. You had dealings before of that type?

A. Yes, indeed.

Q. You feared at the outset that the extent of your interest would become known in the acquisition of the Peerless and Union stock?

A. It was not what we had to fear but it was what we believed would make for smoother operation.

Q. Was it because of your desire to secure the options with less trouble and not be held up by certain stockholders? What was the reason?

A. We felt that there were two men that we had been acquainted with over a very long period of time and that they could conduct the negotiations, not being in the Atlas Powder Company's main office in Wilmington at that moment, to carry on those negotiations in a much better way than we as officers could.

That Messrs. Seligman and Fletcher were on good terms and had the confidence and good will of the principal stockholders of the Peerless and Union Companies; that I personally participated and had directly under by charge and supervised for Atlas the negotiations and the subsequent transfers and exchanges; that Atlas desired to cause this reorganization because Atlas was selling to Peerless and Union a substantial amount of blasting supplies and chemicals and Atlas wished to retain that business, which was highly competitive, and also Atlas wished to acquire the direct high explosives business of those three companies, Peerless, Union and Black Diamond; that Atlas feared that if some plan was not effected, competition might take some of this business away.

That in effecting the plan, it was made known to each of the stockholders of Peerless and Union that their participation in these exchanges was based upon all various steps being consummated up to the conclusion of the plan which took place on October 7th; that the stockholders of the so-called majority group of both the Peerless and the Union agreed to deposit their stock and agreed to go through with certain agreements provided the whole plan was consummated; that this was also made known to the minority stockholders that their exchange was conditioned upon the successful completion of the plan.

That the Peerless Union Corporation was incorporated on September 22, 1930 and all of its then issued stock, consisting of ten shares of preferred and ten shares of common, were issued to the Atlas Powder Company for a consideration of $1,000 for the preferred and $1.00 for the common stock.

Thereafter, the capitalization was increased and the entire issue of preferred stock, consisting of 21,732 shares were issued to the Atlas Powder Company; that 32,198 shares of common stock, plus 5,000 shares, was received by the Atlas Powder Company.

Q. Explain what you mean by 5,000 shares.

A. The Atlas Powder Company planned that there would be 65,000 shares of authorized common stock and Atlas further agreed to underwrite 32,198 shares of the common stock and the stock then accruing to the parties, the majority and the minority stockholders in Peerless-Union, called for all that stock with the exception of about some approximately 5500 shares. The whole deal was consummated on Oct. 7 and there remained about—there were a few stockholders who did not come in. The plan was closed and there were about 5,000 shares of common stock remaining and Atlas believed it was better to issue that 5,000 shares of stock at 2,500 shares each to Seligman and Fletcher than to issue it to Atlas Powder Company. We did not care for any further dominating common stock position. They had become directors and officers of the new Peerless-Union Company and we believed that it would be a good thing for them to have some of that stock.

Q. The 32,198 shares of Peerless-Union common were transferred in the name of Atlas Powder Company?

A. Yes.

Q. The 5,000 additional shares, being in certificates of 2,500 each of Peerless and Union common to Messrs. Seligman and Fletcher in

the name of Fletcher and Seligman respectively as nominees of the Atlas Powder Company?

A. We issued that directly to them.

Q. Did they hold the stock for their own account or for the Atlas Powder Company?

A. They held the stock for the account of the Atlas Powder Company.

* * * * *

Q. Will you explain why the stock was placed in the names of Fletcher and Seligman?

A. I have already said that I did not feel that it was necessary for Atlas to carry any further dominating amount of the common stock.

Q. Do you mean as a record-holder or as a fact?

A. As a record-holder.

Q. Or in fact?

A. In fact the stock was ours. As a record-holder it was in their name.

* * * * *

That I first conferred with Messrs. Seligman and Fletcher in January 1930 and I principally handled these negotiations until October 7, 1930 and that Messrs. Seligman and Fletcher worked under my direction and they represented me during the entire period.

That I never at any time had any written agreement with Fletcher and Seligman regarding compensation for services in connection with this so-called plan of reorganization, but Atlas thought after the plan had been consummated that it would be proper to place some stock in their names as our

nominees; and that Atlas had it put in their names as nominees of Atlas and without consideration.

That the Atlas Powder Company paid them no consideration up to October 7, 1930 when the plan was consummated and they were made officers of the new company. That Seligman and Fletcher were first advised about October 2 that they would receive common stock in the new company and that the certificates for 2,500 shares were delivered to them either on October 7th or October 8th by the officers of Atlas, the stock certificates having been delivered first to Atlas by the new company. That the Atlas Powder Company dominated the policy of the new company by its control of the Board of Directors and officers of the new company.

Q. Will you explain why Atlas was entitled to those 5,000 shares of Peerless-Union stock?

A. The definite contracts between Messrs. Fletcher and Seligman, on the one hand, and the other parties outside of Atlas had been complied with, with the exception of a few shares of stock when this plan was closed on October 7th —a few shares of Peerless Company stock which had not been turned in, and an approximate number of shares of stock of Peerless-Union were reserved for that purpose, so that as and when this plan terminated on October 7th, and as and when the Peerless-Union directors could later acquire those few shares of stock under any plan, whether it would be cash or some further amount of Peerless-Union stock, that would be available, and some was acquired later on, some for cash and some for stock.

Q. Did you consider on the consummation of

this plan on October 7th, 1930, that Atlas was entitled to all of the stock of Peerless-Union Corporation except that which was due to be given to the old stockholders of Peerless-Union?

A. Yes.

That the common stock of the new company on October 7 had no tangible value and the tangible assets of the new company on October 7 were not sufficient to equal the total amount of the issued preferred stock. That after October 7 the new company conducted the same business as had previously been conducted by the three former companies.

Q. Did you receive any acknowledgment from Messrs. Seligman and Fletcher on or after October 7 that they held this stock for account of Atlas?

A. Not written; only verbally.

Q. You did receive verbal notice; they said they were holding 5,000 shares of stock?

A. Yes.

Q. Have you read the stipulation that has been introduced in evidence in this case? Are you familiar with it?

A. I am fairly familiar with it.

Q. Can you state of your own knowledge whether or not the various exchanges and transfers that took place as outlined in that stipulation are in accordance with and a part of this so-called plan of reorganization that you authorized Messrs. Seligman and Fletcher to bring about?

A. They are.

Cross Examination

W. E. Fletcher was not engaged in active business between the years 1927 and 1930; that he resided in Philadelphia and during the period from 1927 to January 1930, he had no relationships or contacts with the Atlas Powder Company. That from 1913 to 1927 he was in the employ of the Atlas Powder Company; that he was Superintendent, a part of the time engaged in the manufacturing and of the business but had no connection with the sales department except in matters of inter-departmental cooperation. That the manufacturing plant of the Peerless Explosives Company was at White-Haven, Pennsylvania, but its principal offices were at times at Philadelphia and Wilkes-Barre, Pennsylvania. That the manufacturing plant of the Union Explosives Company was at Leroy, New York and its principal office at Clarksburg, West Virginia; that the Black Diamond Powder Company manufactured black blasting powder and had its plant at Suscon, Pennsylvania; and that its stock was entirely owned by the Peerless Explosives Company; that Atlas had been selling its products to Peerless, Union and Black Diamond for approximately ten years; that these companies were competitors of Atlas in so far as selling the finished product of high explosives and black blasting powder but that for a period of approximately ten years those companies were purchasing the ingredients such as chemicals, from Atlas that went into the finished product; that these companies did not care to manufacture those chemicals themselves; that Atlas sold them under short term arrangements never by contract until the year 1930; that neither Mr. Seligman nor Mr. Fletcher

were stockholders in any of those companies; that Mr. Seligman conducted a wholesale hardware store at Tamaqua, Pennsylvania and he sold to the public explosives manufactured by Atlas as their representative in that vicinity; he had no contract with Atlas since the year 1914 nor did he receive a salary. These sales of Atlas product were made upon a commission basis; that I conceived the idea of putting these three companies together under a plan of reorganization, the Peerless, the Black Diamond and the Union, which Atlas would control.

That it was my idea from the inception to have Atlas form a corporation which it would control, to acquire the properties and assets and business of these three companies; that Atlas wanted to acquire these three companies on the best basis it could and I first communicated my idea to Seligman and Fletcher. I called them in because I knew them so well and believed it would be better to do what we were attempting to do through them as intermediaries rather than do it directly; that Atlas did not go directly to the officers and stockholders of the three companies because Atlas thought Seligman and Fletcher knew them better and Atlas believed it would be better to conduct the negotiations through them.

Atlas had no written contract with Seligman and Fletcher and I told them that Atlas wanted to include in the new corporation these three companies. The instructions I gave Seligman and Fletcher were to see if they could make an acquisition of those three companies, and, if so, to let me know what kind of a deal they could make, and if we liked it we would go through with it. They were instructed

to approach all possible stockholders of the three companies.

Q. You were interested in getting the stock of those companies rather than the assets of the companies?

A. Naturally, when we wanted to get the companies we went to the owners of the stock.

Q. You were not interested in buying all the assets of the company for a particular lump sum of money, were you?

A. We wanted their entire assets and their entire business, also, in this new corporation.

Q. Go ahead. What were your instructions, to approach stockholders of those companies?

A. In an effort to acquire all the assets and all the business of those three companies.

Q. What instructions did you give Messrs. Seligman and Fletcher to convey to those stockholders? That you were ready to pay so much cash or what?

A. My instructions were made along the line of getting them to make an offer.

Seligman and Fletcher reported back to me they were making progress, but I can not recall what happened day by day between January and October 7, 1930. We held many conferences.

Q. When you first approached Mr. Seligman and Mr. Fletcher to get in touch with the stockholders, did you tell Mr. Fletcher to suggest to those stockholders that a new company would be formed and that you would give so much cash and so much stock of the new company and so much Atlas stock preferred and common to

those stockholders? Did they go out from you with those instructions? How did all of this develop?

A. They went out with instructions to get an offer from those stockholders to sell—to turn over—to do something—to form a new company and it finally developed as shown by the contracts, but I cannot tell you what thoughts may have been in the minds of our negotiators. All I wanted to know was could we do the work; could we accomplish what we were after, and finally it happened on Oct. 7th.

That Atlas bought the assets and business of Peerless and Union, and to put it more in sequence, Atlas Powder Company caused the formation of Peerless-Union Corporation as a subsidiary to Atlas to acquire the assets and business of Peerless, Black Diamond and Union, all of which was eventually done; that Atlas had no written arrangement with respect to compensation with Fletcher and Seligman; that they were told they would become officers and directors of the new company when the plan was completed, they were made officers and directors and started from October 7th, the day the plan was made; that if the plan had not gone through, Fletcher and Seligman would not have received anything; that on October 8th, 1930, I conferred with Seligman and Fletcher and made arrangements with them as to their salaries they would receive as President and Vice President respectively.

I attended the special meeting of the Board of Directors of Atlas Powder Company on October 2, 1930, at which Atlas consented to the issuance to it of 21,732 shares of the preferred stock and 32,198

shares of common stock of the Peerless-Union Explosives Corporation and also to the issuance of not more than 5500 shares of common stock to Harry K. Seligman and W. E. Fletcher; that on October 2nd, 1930, we felt reasonably sure this plan would be consummated and this 5500 shares of stock had not been issued and Atlas did issue that stock, 2500 shares each to Seligman and Fletcher as nominees of Atlas Powder Company; that Atlas did not care to have any greater dominating position than it had, and we wanted them as officers and directors of Peerless-Union to hold that stock in their name; that the certificates each for 2500 shares were issued on October 7th, but I believe delivery was made to myself or to another officer of Atlas who, in turn, delivered them to Seligman and Fletcher either on October 7th or 8th. I presume they were made out and issued at the same time the other shares were.

Q. Who voted that stock, those certificates of 2500 shares each, at subsequent meetings of the corporation?

A. Messrs. Seligman and Fletcher. I might add they would have been qualified to use them to vote on. Whether they ever voted them at a meeting or not I don't know.

That Atlas went out into the open market and bought all the common stock of Atlas used in the transaction and some of the preferred stock while some of the preferred stock used was newly issued stock.

I do not recall that I ever instructed Seligman and Fletcher in their negotiations that Atlas was ready and willing to pay all cash for the stock of

the three companies; that if the stockholders had insisted on selling their stock for cash the plan would not have failed if the amount of cash had met with Atlas' approval; it is my recollection, but the record will show, that when the plan was closed on October 7 nobody had received all cash; that I believe some of the stockholders of the three companies simply got cash and stock of the new company without getting any Atlas preferred or common stock.

That everything embodied in the contracts of October 7, 1930, had not wholly been agreed upon until approximately October 6, 1930; they had been in the making and certain things accomplished, dependent upon all agreements being carried out in toto; that some of the things had been contingently agreed upon for a matter of thirty days ahead of October 7th.

That the accounting firm of Barrow, Wade, Guthrie & Company was engaged about one month prior to October 7th to audit the books of these constituent Companies, as consummation of the plan of reorganization was in part contingent upon a verification by Atlas of representations made to Messrs. Seligman and Fletcher as to the amount and nature of the assets and liabilities of Peerless and Union. Atlas sought legal advice from attorneys in connection with the matter shortly after July 1, 1930; that the general idea of forming a new corporation was conceived by Atlas' own officers and Messrs. Fletcher and Seligman.

There was no objection to Atlas approaching the stockholders of the three companies directly, but Atlas believed they could get a better price by having Fletcher and Seligman approach the stockholders; that there was no written contract between Atlas

and Seligman and Fletcher, but there was a verbal arrangement that if the plan of reorganization was consummated, Seligman and Fletcher would become officers in the new corporation, and when the plan was consummated they did become officers and directors in the new corporation; at the outset of the negotiations, I had no idea what form of organization or reorganization it would take when I first talked with Seligman and Fletcher, that all developed as time went on; I told them to go out and see what kind of an offer they could get from the stockholders of the Peerless Company and the stockholders of the Union Company; they went out and reported back to me; the stockholders made a definite offer to sell their stock, but I do not remember from memory what the offer was.

Q. That was for so many dollars?

A. It was generally a question of a combination of dollars and securities, of the Atlas Powder Company and of a new company to be formed.

Q. These stockholders came back to Atlas, through Messrs. Seligman and Fletcher, and told them, "we will take so much cash, so much stock of Atlas, and so much stock of a new company if Atlas will form it"?

A. They did.

That was one of their offers; they made so many that I can't remember them; the different stockholders did not make different offers, the majority of Peerless made a similar offer and the majority of Union made an offer.

There was no written contract at any time between

Atlas Powder Company and those corporations or those corporations' stockholders; there was no written contract at any time between Atlas Powder Company and the Peerless-Union Explosive Company, the new company; I have no recollection of any.

The majority group of Peerless was made up of Eugene Frost, Day and Bashford, they controlled 8500 shares of common stock; we received offers from the minority group, and prior to the final consummation of October 7, 1930, the minority group was offered a certain basis of exchange or purchase and a great majority of those minority stockholders did accept the plan by October 7 when the plan terminated, and all agreements were carried through.

Redirect Examination

That J. Edgar Long was President of Union before October 7th and was the principal stockholder of Union; that Eugene Frost was president of Peerless prior to October 7th and one of the majority stockholders therein; that Bashford was an officer of Peerless.

The Atlas Powder Company felt that it did not want as much stock in its name as would be the case with what Atlas received directly under its contracts, plus the amount that was later turned over to the nominees; that I didn't intend to say on cross examination that the 5000 shares issued to Seligman and Fletcher didn't belong to Atlas, that the stock belonged to Atlas and the ownership of Fletcher and Seligman was purely nominal; that the plan which was finally consummated on October 7th, 1930 became crystallized substantially about the first week in September, 1930; that there were no signed con-

tracts between Atlas in its own name and the Peerless and Union stockholders, but in signing the contracts Seligman and Fletcher were acting for Atlas.

Recross Examination

That the stock when issued to Fletcher and Seligman belonged to Atlas. I say that because the general plan of about 65,000 shares of common stock was the amount authorized to be issued approximately; the contracts made by Seligman and Fletcher with the majority and minority stockholders of Peerless and Union called for the issuance of a certain number of shares to them and, after eliminating those shares issued direct to Atlas, there was left about 5500 shares of stock which we estimated on Oct. 2 as being over and above what was called for in the contracts; that belonged to the Atlas Powder Company but we did not think it was advisable to issue that in the name of Atlas; we preferred for many reasons to issue that in the name of our nominees, Messrs. Fletcher and Seligman.

Atlas underwrote 32,198 shares of common stock of the new corporation and all of its preferred, but Atlas was entitled to the remaining common shares after that underwriting.

I believe the authorized shares of common stock were 100,000 of which 65,000 was to be issued. All of the preferred and 32,198 shares of common were to go to Atlas, for which Atlas was to pay some $900,000 cash and so much of its preferred and so much of its common stock. We believed the balance of the common stock belonged to Atlas and Atlas did cause 5,000 shares of it to be issued to Messrs.

Seligman and Fletcher. It was not always understood that the balance of this stock was to go to Fletcher and Seligman.

Q. Where did you get your authority for saying you always felt the balance of it was Atlas'? Where did they get the authority or their ownership over the balance of it?

A. The Atlas had dominated the whole plan of this reorganization by putting up some $960,000 in cash. It had supplied 6000 odd shares, of its preferred stock and 8,000 shares of its common stock.

It was stated in the contracts what Atlas was to give and what it was to get, but there were 65,000 shares of common stock to be issued and Atlas caused 5,000 shares of it to be issued to its nominees; of the 65,000 shares, 32,198 was issued to Atlas Powder Company, 27,145.79 were issued to the stockholders of the Peerless and Union Companies under the contracts, leaving a balance of 5,673.27 shares undisposed of of the authorized stock to be issued; that Atlas felt it owned these remaining shares and could dictate who was to get them.

On October 2nd, Atlas in its directors' meeting believed that there would be about 5500 shares not required under the plan and at that time caused 5,000 shares, 2500 each, to be issued to Seligman and Fletcher as nominees of Atlas. The certificate did not say "Nominees" and Seligman and Fletcher did not assign the stock certificates.

Redirect Examination

My testimony so far is that Atlas was entitled,

under its plan of reorganization, to all the stock of Peerless-Union, subject to this liability, through Messrs. Fletcher and Seligman, to give in exchange twenty-seven thousand plus to the stockholders of Peerless and Union to cover the exchange; that, therefore, any stock remaining belonged to Atlas.

Thereupon, W. E. FLETCHER was called as a witness by and on behalf of the taxpayer and having been first duly sworn testified in substance as follows:

Direct Examination

My name is W. E. Fletcher and on Oct. 7, 1930, I was Vice-President and Secretary of the Peerless-Union Explosives Corporation, and was given a salary as Vice President. I was employed by the Atlas Powder Company from 1913 to 1927, first as plant manager and later as Assistant General Manager of operation of all plants, retiring voluntarily in 1927. That J. Edgar Long was President of Union Explosives Company prior to October 7th; that Ed Day was President and Eugene Frost was Vice President of Peerless Explosives prior to October 7th; that I believe Bashford was Vice President of Peerless; that these were the same men I dealt with as the majority stockholders of the old companies; that on and after October 7th I was secretary of Peerless and Union Companies and also the new company, the Peerless-Union Explosives Corporation.

That at all times material to the contracts in-

volved I was acting for the Atlas Powder Company, my activities commencing January, 1930 and continuing through October 7, 1930. At no time did I have a contract in writing with the Atlas Powder Company or Peerless-Union in respect to compensation for services rendered in connection with the plan of reorganization. However, Mr. Lyon told me that if the plan went through, he would give me a position as an officer in the new company to be formed; that I have been acquainted with Mr. Seligman and did business with him for Atlas since 1906 and frequently visited him at Tamaqua, Pennsylvania which was the district where many of the stockholders of Peerless and Union Companies were located.

The Tamaqua Bank at Tamaqua, Pennsylvania, was used as the depository to receive from us the cash and stock and to receive from stockholders their certificates, the Bank agreeing to distribute in accordance with the plans and arrangements to be made with the stockholders. This bank was selected for convenience to stockholders and because Seligman and I knew the people well; it was the bank Seligman used.

I secured options on the stock of the minority and we dealt with them in accordance with the written contracts on the same basis; all of the minority accepted in accordance with the plan except a few scattered Peerless holders did not come in, but all of Union minority came in; by "came in" I mean they all accepted.

The bank at Tamaqua had a list of all stockholders and they kept their records in accordance with the stock that came in and the payments that went

out. The majority group were paid in Philadelphia on October 7th. They would hand in their certificates and receive their payments for them on October 7th, the day of which the reorganization was closed or completed.

After January 1, 1930, I first became associated with this matter and had a number of conferences with either the stockholders or officers of the Atlas Company; that Mr. Seligman and I went down at the request of Mr. Lyon and talked over the general matter, and Mr. Lyon told us that he would like to do this, and he wanted to do it through forming a new company; that he did it that way because he knew from his experience that that was the better way to do it, which we agreed to also; from talking with Mr. Lyon, we knew from the start, the fundamental plan was the exchange of stocks because we knew that was the proper way to handle this proposition; that there was no chance for Atlas to have carried out this transaction entirely through cash for others had tried that, and these people would not have sold for cash, except some enormous sum that would allow them to retire from the business; they did not want to sell for cash. The majority stockholders of Peerless and Union insisted on a continuity of interest in the new organization.

The contract designates me as a promoter. Throughout the deal I was representing Atlas but we did not disclose this fact because we felt it might be detrimental to the plan to have it known Atlas was interested in it. I speak for Seligman too, who always worked with me. Atlas would not have gone through with the deal unless they understood they would own or control the majority of the stock.

That I did not know I was to get any stock in the new company until October 7, 1930, when the certificate for 2500 shares was handed to me; that neither by contract nor word of mouth had any promise been made to me that any shares would be issued to me; that I did not consider these shares were given me as a consideration for services I had rendered; that I immediately upon receipt of the stock communicated to the officers of Atlas Powder Company that I would hold the stock as Atlas' nominee; that the stock at all times was accessible and subject to Atlas' dictation.

That the officers of Atlas advised me that the general purpose of the plan was "to hold the large amount of business which they did with these companies and which was apt to be lost at any time, and another was to increase their general explosives business in a very vital territory which was very helpful to their company".

That we always considered the formation of Peerless-Union was the basis of the whole plan from the very start, and that Atlas must control it and otherwise Atlas said they would not have completed the deal or gone through with it; that the exchanges and transactions covered by the stipulations were the essential parts of the plan.

Q. Can you state of your own knowledge whether the plan that was carried out and consummated on October 7th was crystallized in substantially its final form at a prior date; that is, prior to October 7th, 1930?

A. Yes; it basically was.

Q. How long before, would you say, about?

A. Well, we knew how this plan was going

to develop, how it would go basically, in the spring.

There were several details to be worked out, but as soon as they were worked out and completed, it went through on October 7th.

At the close of business on Oct. 7, 1930, there were 602 shares of common stock and 1,544 shares of preferred stock of Peerless Explosives Company outstanding, which we were not able to acquire. About a week or ten days subsequent to October 7, 1930, the Board of Directors of Peerless-Union authorized the President to acquire this outstanding stock on such favorable terms as he could arrange. The President had me to do this work because I was in touch with these stockholders, knew them well and had handled most of the details of the transactions with them.

I was instructed to buy this stock for cash or exchange on any basis that seemed fair and reasonable. No specific amount was set, but we preferred to pay stock to conserve our cash position as much as we could. So I acquired that stock for the Peerless-Union Explosives Company by giving stock of the latter company, when they would take it. In the course of three months we had all of this stock; some of it was acquired outright for cash without any exchange of stock. The acquisition of this particular stock had nothing to do with the plan of reorganization, "it was just to clean up and close the book". I only consulted with the directors of Peerless-Union from whom I received my sole authority. I had all of this stock in by December, 1930, as I remember, having acquired the first share about a week after the close of the plan.

Peerless-Union furnished the cash through the Bank at Tamaqua, and when I purchased this stock, the Bank arranged to pay for it. The Bank arranged for them to come in and get the cash out of the money which was provided for by Peerless-Union. The cash used in the transfers prior to October 7th was entirely supplied by Atlas; after October 7th by Peerless-Union.

The figure "Peerless-Union common, 2,096.50 shares" appearing near the bottom, right side of Exhibit "P" of the stipulation represents the amount of stock given in exchange for Union Preferred and an additional amount transferred to take care of the back dividend on the preferred stock of Union at the rate of $50 per share that had accrued and was in arrears, that one share of Union was exchanged for one share of Peerless-Union; that the difference between the amount necessary for that exchange and the figure of 2,096.50 is the amount necessary to take care of the dividend adjustment on the preferred stock of Union. The figure 6,477.79 shares of Peerless-Union appearing near the bottom in the right-hand side of Exhibit "O" of the stipulation includes the amount of stock necessary for the exchange of Peerless-Union and Peerless Explosives at the rate of one-half share of Peerless-Union for one share of Peerless Explosives, plus the amount necessary to take care of the arrears of dividends on Peerless preferred stock.

The delay in dissolving Peerless Explosives until December 31, 1931, was due to the failure of the attorney to file the certificate of dissolution, the certificate, however, having been turned over by me to the attorneys in January, 1931, when a meeting was held and authority to dissolve the company was

voted; that the delivery of cash and stocks to the majority stockholders of the old company was made at Philadelphia on October 7, 1930 across the table with me present.

That when the capital stock issues were worked out, it was planned to issue 65,000 common shares of the new company of which Atlas subscribed for 32,198; that it was thought 65,000 shares would be necessary to take care of the majority and minority stockholders of the two old companies and the subscription of Atlas; any balance of Peerless-Union stock would belong to Atlas, but it was decided that Atlas' record holdings would be limited to 32,198 shares because of the objections of the sales departments of these companies which departments felt that if Atlas had too dominating a position they would lose good will and a lot of the business of the old companies; so 2500 shares of the balance was issued to me and 2500 shares to Seligman.

Cross Examination

In 1927 I resigned all employment with Atlas Powder Company and retired from any business activity; and thereafter resided in Philadelphia, but frequently saw Mr. Seligman between 1927 and 1930. One day in January, 1930, Mr. Seligman was in Philadelphia and informed me that Mr. Lyon of Atlas Powder Company wanted both Mr. Seligman and myself to come to Wilmington where the offices of Atlas were, and see him. We called on Mr. Lyon in Wilmington in January, 1930 not knowing the purpose intended and he said that they (Atlas Powder Company) desired to work out some plan to take over these powder companies, Union Explosives,

Black Diamond and Peerless Explosives Companies. He was wondering if we could suggest anything to help Atlas work out some constructive plan whereby they could get hold of these companies. He knew that I knew these men intimately and had for many, many years. I knew the majority stockholders of both Peerless and Union intimately for many years but did not know a lot of the others. I knew Mr. Long of Union very well but did not know the others of Union very intimately. I knew Day, Frost and Bashford of Peerless intimately but the other stockholders of Peerless I had only met, and did not know them very well. A few of them lived around Tamaqua and were friends of mine.

Mr. Lyon told me he would like to form a company to take these companies over; that he wanted to get hold of them and he wanted us to consider that and go out and see what offers we could get, to get some line on a basis for a negotiation. The instructions that Mr. Lyon gave me and Mr. Seligman at the first meeting was to keep in mind the general plan of forming a company to take them over and to go and talk with them, to get some figure that would be a basis to negotiate on. Mr. Lyon suggested and told me that he wanted to form a new company and to see if I could not acquire the stock of these companies through exchange of stock for the new company. This was Mr. Lyon's idea and I agreed with it. It was not my idea, or at least I did not say so at first but I knew and he knew that probably was the only way it could be put through. I knew this because I know how these deals are handled with these other companies. They will not sell out. You cannot buy them out unless they are bankrupt; unless you pay them a sum of money

which would be beyond all reason. You must take them in some way through a reorganization and allow them to make money that way and continue in the business. Prior to meeting with Mr. Lyon I had not discussed with any of these stockholders of Peerless or Union whether or not they would be interested in selling their stock for cash. I had heard that other people had made them offers and informally they told me and I knew pretty well how they felt but I had never talked with any of the stockholders because I never had anything to offer them or to suggest. I satisfied myself that they would not sell out for cash because I know these stockholders to be independent men. I have been associated with them a long time and I knew there would be no chance. I knew they had been offered cash by other interests and they would not talk about it even.

The conference with Mr. Lyon lasted probably a couple of hours and the only contract entered into between myself and Mr. Seligman on the one hand, and the Atlas Powder Company on the other hand, at the time of that meeting, was that Mr. Lyon stated that if the deal could be put through he would place us as officers in the new company. The deal to be put through was the plan to acquire these companies under this plan of reorganization that Mr. Lyon was suggesting. There was nothing said at the time about what salary I would draw as such officer. I made no inquiry about the salary because I knew whom I was dealing with. There was no agreement between Mr. Lyon representing the Atlas Powder Company and myself and Mr. Seligman as to the time required to put the deal through. I did not ask Mr. Lyon what my compensation was going

to be as it made no difference to me. I was not doing anything anyway. I was well satisfied if I could become placed in the business again in a good position which would give me something to do, which was what I was after. I was perfectly willing to spend my time on that plan rather than being around doing nothing. If the plan had not gone through, I was not to be compensated. I was perfectly willing to gamble and go out and do this work to get a job if the plan went through.

Nothing was said to Mr. Seligman at the meeting with Mr. Lyon with regard to any compensation. He had a business and he had to take a good deal of time off working on this plan, but, of course, it was right up in his territory which did not make it quite so bad for him as it might have been. I had to go up there and do most of the work. Mr. Seligman did not exact any compensation. He had a going business up there in Tamaqua at that time. He did not care anything about the job. He would do it as a matter of friendship of Atlas and for me. He was given a job because he was an asset to the company in the sales end of this business. What I have related heretofore is all that took place at the meeting with Mr. Lyon. At the conclusion of that meeting when Mr. Seligman and I departed the specific instructions that we had were to see the majority holders and see how they felt about this plan and see what we could do with them. We had no instructions that if the majority holders were not willing to go into the formation of a new company, to see whether or not they would sell their stock outright. That was not considered. I think Atlas would have acquired the business of these corporations without forming a new company if Atlas could have

taken them over for a moderately small sum of money, but I believe that Mr. Lyon was pretty sure that that could not be done so he did not even attempt it. At the time of this meeting, I do not think that Mr. Lyon had seen or talked to any of the stockholders about the possible purchase of their stock in those companies.

The work was divided up between Mr. Seligman and myself but we went together. We first contacted Mr. Frost and Mr. Bashford of the Peerless Company who really were the dominating interests of that company. They were the officers of Peerless and we had a long talk with them. We did not disclose Atlas Powder Company at this time. We told them we had a plan of reorganization of the company that we thought would be very interesting to them. We told them we had backing which we did not disclose and told them we did not care to at that time. We told them we had backing that would provide ample money to reorganize their company and the Union Company and put them into another company, and would provide them with ample working capital so they could expand and so that their people could get their original investment out of it, and we wanted them to tell us on what basis they would talk on going into a thing like that. Mr. Frost and Mr. Bashford said they would be willing to consider any plan that looked as though they would make progress and that they would get out of it what they thought was due them, and we insisted that they tell us their ideas which they would not do. They said that they had to talk to Mr. Day and they had to carefully consider the thing before they would make us any proposition of any kind. That was all that happened that day and we met thereafter later

on. I did not tell them how much cash they would get out of it. I was trying to find out what was involved in the thing; what their ideas were because we had no base to figure on. We did not have any of their statements at that point. This was more or less a feeler to see whether or not they would be favorably inclined to disposing of their stock. After this conversation with Mr. Frost and Mr. Day, I cannot remember just the order in which I saw all these people, but shortly afterwards I saw Mr. J. Edgar Long alone with Mr. Seligman. He was the majority holder of the outstanding stock of Union. He was willing to go into the thing the same as they were. He would not commit himself and he wanted to go over it with his immediate associates so after a lot of talk, that ended that meeting.

The way that we put it up to Mr. Long and Mr. Frost and Mr. Bashford they became interested. We put up a good picture that their business would be improved and that their business would expand a lot faster than if they tried to do it themselves with their very limited capital.

Q. I thought your plan was to get the business of these corporations. How would there be any progress in the business of those corporations if it was ultimately understood that the point you were reaching was for Atlas to get their business?

A. Because they were going along with us. There was never anything else thought of except that—that they would go along with the Company.

Q. Their return was to come from dividends on stock in the new company?

A. That, and whatever they got out of the original plan, of course.

We did not report back to Mr. Lyon at that stage. We waited for the replies of these people. We did not bother any minority stockholders at that stage. We figured that if we could not sell the idea to the majority we might as well quit so a few weeks later we met with Mr. Frost and Mr. Bashford again and they named a definite figure, and they wanted to know definitely what we had in mind.

Q. What do you mean by "a definite figure" —in dollars and cents?

A. No; there was not any dollars and cents involved. They named a figure at which they would turn over their majority holdings, and then they named a percentage interest, as I remember, which they demanded to be given them from the new company, and they demanded certain salary stipulations, and so forth.

Q. Oh, did you divulge to them that they would also be officers in the new company?

A. We told them they would be employed. We did not say as what, and that was very necessary in this deal, because these men would not come in under the plan on any other basis, I do not believe.

We had no authority from Atlas Powder Company at that time to hand out jobs to any of these people. Our only authority was to find out what had to be done to make the thing a success. It was a counter-proposal from them that they would have to be taken care of in the way of jobs, but I expected that, and then Mr. Long came along the same way. He

wanted so much cash interest in the company and to be retained in the company. We did not divulge where the money was to come from or the connection with the Atlas Powder Company. We divulged the fact that we were going to be officers in the new company. We represented that we were representing an interest to do this job, and we were going through with it and stay with it. The majority stockholders did not inquire how much salary we were to get as officers. They were not interested in that. All of these men were friends of mine. I obtained tentative proposals from both parties which were pretty high. I do not know the details of them. Mr. Seligman and I took them to Mr. Lyon and that gave us a base for considering the proposal. During all of this time I never divulged that we were representing the Atlas Powder Company. We kept this quiet until July. We told them frankly we were representing a strong interest with plenty of money and we were not at liberty to divulge it. We told them it was all right and they had enough confidence in us to let it go through at that. The fact that it was not divulged that the Atlas people were interested was because if it became known in the trade that Atlas Powder was out trying to buy out these small companies, and that is the word that would go around; it is very likely that some competitive interest would try to stop it by getting hold of a stockholder to stop it, or buying up stock to hold out, or something of that kind, and it would also probably make it much more difficult to bring in the minority stock interests, if it became generally known that such a large corporation was interested. I can't remember specifically what the next step was except we carried on negotiations back and

forth a number of times until we finally got down to the plan as set forth in these papers, (Contracts of Oct. 7) which the majority stockholders accepted orally.

Lawyers and accountants first came into the meetings about the first of June after we had made the deal with the majority holders. We told the majority holders in July that the amounts they wanted and the protection they wanted for the stockholders etc. were satisfactory to us and our principals and the majority holders said "all right then if the majority can now be brought in we will go through with the deal". There had been no discussion about the stockholders' liability for Federal income tax up to that time and we only heard the matter discussed when the thing was finally closed. That might have gone on without our knowing it. The lawyers might have done that but I do not know anything about it. I first heard about it when I heard the lawyers discuss it in the last couple of days of the proposition. I was around their offices a lot then. They were discussing it and it was in one of the contracts that if there was a tax Atlas would have to pay it. There was an agreement reached between the majority stockholders of Peerless and Mr. Seligman and myself about the first of July and it was after July that we tried to get in touch with the minority stockholders. That was one of the stipulations in the plan, that we bring in practically all of the minority stock. So we immediately worked out a plan which we thought was fair and submitted it to the minority stockholders. This did not occur until after we had agreed with the majority. We approached the minority group, sending out a letter to every one setting forth the offer for their pre-

ferred and common stocks as set forth in the plan. We offered to buy their preferred stock for cash at what they paid for it, par, and we offered to exchange their common and we offered to compensate them for back dividends in the form of common stock of the new company. That was in the offer and we asked them for options on their stock. I am not talking about the 1544 preferred group and the 600 odd group. They are the ones that never did come in under this plan. I am talking about the entire stockholders of the company outside of these four. In the Peerless Company, I am talking about the difference between 16,128 holders of preferred stock and the 8500 group. I reached an agreement with Mr. Long in July, about a couple of weeks after the agreement with the majority group of Peerless. It was necessary to wait from July to October before the contracts were written up because it proved to be a tremendous job and took an awful lot of time to get these 400 stockholders to turn in their stock. I had to travel continuously selling the idea. We had to do mostly by personal solicitation and there were so many of them to see. The first thing that I knew about the stock of the company being issued to me was when I received the certificate. I did not know anything about it until it was given to me. I think that was given to me on the 8th but I cannot recall absolutely. It was just handed to me by one of the Atlas officers. It may have been Mr. Lyon but there was so much confusion I have forgotten it. I had never heard it mentioned that I was to get any stock but it was handed to me and I knew nothing about it. In handing it to me Mr. Lyon or one of the officers who gave it to me told me it was being given to me and he said it was being given to

Mr. Seligman too, in order to reduce the amount of Atlas holdings in this company for sales reasons and they expected us to hold it to be used for the interest of Atlas in any way that they cared us to use it, and we were perfectly willing to do it.

The certificate was not made out in the name of the Atlas Powder Company, but it was made out to me as though I owned it. I did not assign it and give it back to Mr. Lyon but I kept it right through until the Peerless-Union was consolidated with Atlas which was about March 1932, I think. No dividends were paid on this stock during the interim and when Mr. Lyon gave it to me he did not say anything to me with respect to future dividends on the stock. Mr. Lyon did not say anything about dividends because he knew that I knew there was no possibility of dividends on it for some time, anyway. I did not know this when the certificate was handed to me, only in a general way. Not a word was said to me or any mention made to me about what I was to do with the dividends if dividends were declared. Mr. Lyon did not ask me to sign the certificate in blank, he just gave it to me and told me why it was given to me and there was nothing more said about it. I told him I would hold it accordingly, and that was the end of it.

When Peerless-Union and Atlas consolidated in 1932, I was issued shares of Atlas in exchange for the Peerless-Union stock. The Atlas stock which I received in the 1932 exchange I sold and I got the proceeds resulting from the sale.

Mr. Lyon told me he was giving Mr. Seligman a certificate for 2500 shares. Mr. Seligman got a position with the new company up in Tamaqua. He was appointed sales manager for that District—

something he could carry on and his own business, too. He got a salary which was fixed monthly and I also got a salary so much a month. I was an officer of the new company, Peerless-Union, and Mr. Lyon fixed my salary and all salaries of the Peerless-Union. Mr. Lyon suggested all the salaries to which all the officers agreed, and Mr. Seligman and I fixed them the way that Mr. Lyon had suggested.

Redirect Examination

Q. You stated a moment ago that when the stock you had in Peerless-Union Company was exchanged for Atlas stock, you thereafter sold the stock or part of it and received personally the consideration therefor. Were you permitted to hold the Atlas stock and receive the consideration as a result of compensation or bonus for services rendered before or after October 7, 1930?

A. Afterwards. They told us that now that the thing was wound up and Atlas for economic reasons had taken over the Peerless-Union they would let us keep that stock, because we had earned it.

I understood that the 2500 shares were issued to Seligman and me because of sales reasons. It has been a matter of experience in taking over companies that you are very apt to lose the good will and a lot of their business if one of the large, dominating companies take it over in a way that the trade people feel that they are dominating that company 100 per cent. So in order to offset that feeling which is always present, Atlas felt it advisable

to reduce their holdings to a reasonable extent, so they only had a bare majority.

Atlas did not want to have it a matter of record that they held 57 or 58 per cent of the Peerless-Union stock. I do not mean to imply by my testimony that Atlas in any way divorced itself of real ownership of the 5000 shares, as I know they did not. It was about the first of March 1932, after the Peerless-Union stockholders had voted to accept the Atlas offer that I was advised that the stock and its emoluments or proceeds were mine to keep for myself; they told us that they were pleased with the way we had handled the Peerless-Union and they would be glad to let us have that stock to keep. Mr. Lyon told me that. I considered this a release from my previous agreement to hold the stock for Atlas' disposition at any time. Mr. Lyon said he was very well satisfied with the way we had handled the Peerless-Union Company and wound it up in accordance with Atlas' offer, and so forth.

In all my negotiations with the stockholders of Peerless and Union Companies, the plans considered always provided for a continuity of interests in the new company; the stockholders wouldn't consider anything else. I wanted these stockholders to continue with the new company as they were valuable to us, Atlas wanted to secure the business of those companies.

When I first approached Bashford, Frost and Day, we had a basic plan in mind to form a new company; we never solicited a cash offer for all their holdings and we never considered doing so and never suggested it, and we did not treat this as a purchase of their holdings.

* * * * *

Q. They were not interested, when this plan was put up to them, that they should have the same continuity in Atlas that they had had in their own corporations?

A. You mean in 1932?

Q. No; in 1930.

A. Well, when the agreement was drawn with the majority stockholders they did not know Atlas was in the picture or when we originally got together on it.

Q. So there was nothing about a continuity of interest in going into the Atlas Company?

A. Not at that moment.

(Mr. Moyle). I may say I asked the question with respect to Peerless-Union and not as to Atlas.

Between the period from 1930 to 1932, I kept the certificate of 2500 shares of Peerless-Union in my safety-box and not until 1932 did I make any assignment of it. The certificate which was issued to Seligman, I do not know where he kept it.

In connection with the reorganization in 1932 when Peerless-Union sold to Atlas, Atlas made the offer to all the stockholders of Peerless-Union. I received the offer and attended the stockholder's meeting and director's meeting and voted in favor of accepting Atlas' offer. At that meeting I voted 2500 shares direct and not by proxy. I voted the 2500 shares at the previous meeting of stockholders in 1931. As I remember, Mr. Seligman was present in 1931 at the stockholder's meeting and he voted the stock.

At the meeting of October 7th in Philadelphia, I was present, attorneys representing Atlas and Peerless-Union were present; there were some auditors there, Mr. Seligman was present and he was representing himself as one of the contracting parties. Mr. Frost was there in person, as was Long, Day and Bashford, and some others that I have forgotten. All the contracts which are attached to the Stipulation in this case were signed at a continuous series of meetings held on that date when the stock certificates were exchanged and the majority holders received in exchange therefor the consideration provided in the contracts. Checks and not cash were passed. These checks were issued by Peerless-Union; Atlas had taken Peerless-Union stock and given that Company cash of over $900,000 and securities and then Peerless-Union in turn paid that out to these stockholders. The cashier of the Tamaqua Bank was present at the meeting to receive the $900,000 odd and the securities from Peerless-Union which Atlas had previously at the same meeting handed to Peerless-Union. He took the stock that the stockholders turned in and received the money to distribute then and there, and went right back to Tamaqua.

Q. So this was a deposit of the nine hundred odd thousand dollars in the name of Peerless-Union, and Peerless-Union had individual checks drawn to the stockholders set forth in these agreements for the amount of cash they were to receive drawn against that deposit.

A. I think the bank only got about $600,000 —$300,000 was working capital.

Q. That is right. There was $300,000 retained as working capital, but it was all, like-

wise, deposited in the bank down there, was it not, or were there two checks, one for some $600,000 and the other

A. Yes; they were separated * * * .

There never was at any time any written contract between the Atlas Powder Company and any of the stockholders of the Union or Peerless, except Exhibit "F" attached to the stipulation is a contract made between Edward R. Day, party of the first part, Peerless-Union Explosives Corporation, party of the second part, and Atlas Powder Company, signed by me and is just the tax contract. I had forgotten the details of those tax contracts because I did not handle them. In connection with the reorganization plan, Atlas acted through us. I know of no contracts which Atlas signed in connection with it; I had overlooked those tax contracts which came afterwards.

Redirect Examination

The only two meetings of the stockholders of Peerless-Union were those held in 1931 and 1932. At those meetings I voted the 2500 shares. The stock issued in the name of Atlas was voted by proxy. There were three names mentioned on the proxy. I have forgotten just who the three were but I know either Seligman or I were on the proxy.

When I stated I was representing myself at the meeting of October 7th as one of the signatures of the contracts, I was still representing Atlas at that time. During all the negotiations with the stockholders of Peerless and Union up to the early part of July 1930, I indicated I was working for an undis-

closed principal who expected to finance this reorganization plan. On October 7th I think all parties to the plan knew of Atlas' identity and there was no attempt to cover it up at that period.

Recross Examination

From July 1930 to October 7th, the majority stockholders of Peerless and Union companies knew the undisclosed principal was the Atlas Powder Company. After they agreed, we told them.

* * * * *

MR. MOYLE:

If your Honor please, the petitioner desires to amend his petition in this case to conform to the stipulation and to the proof that has been put in evidence, first, by changing the figure 2,521 shares of Peerless Explosives stock in paragraph 5 (a) (1) thereof to 2,534.38 shares of Peerless Explosives Company stock.

Second, by changing the words "Peerless Explosives Company" at the beginning of paragraph 5 (e) (4) to "Peerless-Union Explosives Corporation".

This was purely an error of the stenographer, if your Honor please.

Third, by striking out from the first line of paragraph 5 (e) (5) the word "directly" and substituting therefor the following: "through the First National Bank of Tamaqua, Pa., and/or Peerless-Union Explosives Corporation".

Fourth, by the following change in paragraph (e) (9) after the words "common stock", "At-

las Company", to substitute for the figures 32,198 and the percentage 54.34 the following, "32,198 issued in the name of Atlas Powder Company and 5,000 issued in certificates of 2500 shares each to Messrs. Seligman and Fletcher, as nominees for Atlas Powder Company".

The percentage to be set opposite thereto should be 62.77 plus".

* * * * * *

MR. GIBBS:

* * * I have no objection to the amendment. I will simply deny * * *.

THE MEMBER:

Very well. The motion to amend the petition is granted. * * *

The foregoing evidence is all of the material evidence adduced at the hearing before the Board of Tax Appeals and the same is approved by the undersigned, Herman Oliphant, General Counsel for the Department of the Treasury, attorney for the Commissioner of Internal Revenue.

(Signed) HERMAN OLIPHANT,
General Counsel for the Department of the Treasury.

The foregoing is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned as attorney for the respondent on review.

WALTER G. MOYLE,
Attorney for Respondent on Review.

The foregoing is all of the material evidence adduced at the hearing and in order that the same may be preserved and made a part of the record, this statement of evidence is duly approved and settled this 12th day of May, 1936.

CHARLES P. SMITH,
Member, United States
Board of Tax Appeals.

PRAECIPE FOR RECORD

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Third Circuit copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Third Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.

2. Pleadings before the Board.
   (A) Petition, including annexed copy of deficiency letter.
   (B) Answer.

3. The stipulation of facts together with all ex-

hibits which were attached and filed with the stipulation of facts.

4. Opinion and decision of the Board.

5. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.

6. Statement of the oral testimony as settled and allowed.

7. Orders enlarging time for the preparation of the evidence and for the transmission and delivery of the record. (Not included in record.)

8. This praecipe.

(Signed) HERMAN OLIPHANT,
General Counsel for the Department of the Treasury.

Service of a copy of the within praecipe is hereby admitted this 20th day of April, 1936.

WALTER G. MOYLE,
Attorney for Respondent.

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 179, inclusive, contain and are a true copy of the transcript of record, papers and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 20th day of May, 1936.

B. D. GAMBLE,
Clerk, United States Board of Tax Appeals.

(SEAL)

A STATEMENT OF THE RIGHTS, PRIVILEGES, PREFERENCES AND VOTING POWERS OF THE PREFERRED AND COMMON STOCK OF PEERLESS-UNION EXPLOSIVES CORPORATION IS AS FOLLOWS:

The terms, conditions and provisions of the 6% Cumulative Preferred Stock and the Common Stock of the Corporation as set forth in Articles FOURTH, NINTH and TENTH of the Certificate of Incorporation are as follows:

FOURTH: The total authorized capital stock of this Corporation is Fifty Thousand (50,000) shares of preferred stock of the par value of One Hundred Dollars ($100) per share, amounting in the aggregate to Five Million Dollars ($5,000,000), and One Hundred Thousand (100,000) shares of common stock without nominal or par value.

The holders of all shares of preferred stock shall be entitled to receive or have set aside out of the net profits or out of the net assets in excess of the capital of the corporation as determined by law, applicable to dividends, dividends at the rate of six per centum (6%) per annum and no more, payable quarterly on dates to be determined by the board of directors.

Dividends on the preferred stock shall be cumulative and shall be payable before any dividend on the common stock shall be paid or set apart. The holders of the preferred stock shall not be entitled to participate any further, by way of dividends, in the surplus or net earnings of the company.

Whenever accumulated dividends on the preferred stock for all previous years and quarterly periods and for the current quarterly period shall have been paid or set aside, all remaining profits or net assets in excess of the capital of the corporation as determined by law may be applicable as dividends on the common stock, if, as and when declared by the board of directors.

The preferred stock shall be redeemable as a whole or in part at any time upon ninety days' notice at the option of the corporation, to be exercised by resolution of its board of directors, upon payment to the holders of said stock of the sum of $100.00 per share, together with all unpaid and accumulated dividends thereon to the date of such redemption. Such notice of redemption shall be given not less than ninety days prior to the date fixed for such redemption by publication in one newspaper of general circulation in the City of Wilmington, Delaware, and one in the City of Philadelphia, Pennsylvania, and by mail to the owners of all such shares to be redeemed, as registered on the books of the corporation, to the addresses of such owners as the same appear on the books of the corporation. In the event of redemption of less than all of the shares of said stock issued and outstanding, the shares to be redeemed shall be determined by lot, and such notice shall state the names of the holders of the shares redeemed and the number of shares to be redeemed held by such persons, respectively.

In the event of any liquidation, dissolution or distribution of assets, whether voluntary or involuntary, the holders of the preferred stock shall be entitled to receive out of the assets of the corporation remaining after the payment of debts, before any payment or distribution is made out of the said assets to the holders of shares of common stock, the sum of One Hundred Dollars ($100) per share and all unpaid and accumulated dividends thereon apportioned to the date of payment. The holders of the shares of preferred stock shall not be entitled to participate any further in said assets than as herein provided. After said amount is paid to the holders of the preferred stock, the remaining assets shall be divided and paid to the holders of the common shares equally and pro rata according to their respective shares.

Except as hereinafter provided in Articles NINTH and TENTH, the holders of the preferred stock as such shall have no right to vote at any meeting of the corporation, except only when and in the event the corporation shall have been, for the continuous period of two years, in default in the payment of dividends thereon or any part thereof, or in the event the net earnings of the corporation for each of the two consecutive calendar years, respectively, immediately preceding any such meeting, shall have, for each of the said years, fallen below the amount necessary to pay the dividends accruing on such stock, in either of which events the holders of the preferred stock shall have equal voting powers with the holders of the common stock, that is to say, the holders of the preferred stock shall be entitled to one vote for each share of such preferred stock so held by them.

At all elections of directors each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock, both common and preferred, entitled to vote thereat multiplied by the number of directors to be elected and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them as he may see fit.

The holders of the shares of either class of the capital stock of the corporation at the time of any issue of the stock of such class, shall have the prior right to subscribe to such issue pro rata to their respective holdings in such class provided the corporation may at any time issue and deliver any part of its capital stock and any increase thereof in exchange or payment for property; provided, however, that prior to any such issuance, written consent of the holders of a majority of the total number of shares of stock of both classes shall have been obtained thereto.

NINTH: Pursuant to the affirmative vote of the holders of at least a majority of the total number of shares of stock of both classes issued and outstanding, given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of at least a majority of the total number of shares of stock of both classes issued and outstanding, the board of directors shall have power and authority at any meeting (1) to authorize the execution of mortgages and liens upon the real and personal property of this corporation; (2) to create funded indebtedness maturing more than one year from date; and (3) to authorize the sale, lease or exchange of all of the property and assets of this corporation including its good will and its corporate franchises, upon such terms and conditions as the board of directors may deem expedient and for the best interests of the corporation.

TENTH: This corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, pursuant to the affirmative vote of the holders of at least a majority of each class of stock issued and outstanding, given at a stockholders' meeting duly called for that purpose, and all rights conferred upon stockholders herein are granted subject to this reservation.

FOR VALUE RECEIVED, _____ *hereby sell, assign and transfer unto*

_____

_____ *Shares*

of the stock represented by the within Certificate and do hereby irrevocably constitute and appoint

_____ *Attorney*

to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ *19*

In presence of:

_____

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement, or any change whatever.

EXHIBIT "Q"

...UNDER THE LAWS OF THE STATE OF DELAWARE.

_____ Shares

...UNION EXPLOSIVES CORPORATION

...PAR VALUE $100.00 EACH FULL PAID AND NON-ASSESSABLE

...% CUMULATIVE PREFERRED STOCK

_____ is the owner of

_____ Shares

...UNION EXPLOSIVES CORPORATION, full paid and non-assessable,

...by ... and ...torney, ...on surrender of this certificate

...CUMULATIVE ... privileges, preferences and voting powers, and ... upon, and upon the terms and conditions set forth in full on the ... properly presented by accepting this certifi- ... this certificate and on the back hereof.

PREFERRED

...Corporation has caused its corporate ... this certificate to be executed in its name and behalf by its duly authorized

_____ day of _____ A. D. 19____.

PEERLESS-UNION EXPLOSIVES CORPORATION

_____ TREASURER. _____ PRESIDENT.

SECURITY BANK NOTE CO PHILADELPHIA

Ex. "T"

Peerless-Union Explosives Corporation

Journal Entry Voucher

Date October 6, 1930 No. [illegible]

	Debit	✓	Credit	✓	Folio
Assets - Various - per schedule	$1,216,702.47	✓			
Land, Buildings, Machinery & Equipment	536,607.27	✓			
Goodwill	906,586.92	✓			
Liabilities & Accrued Charges - per schedule			$ 881,34[illegible].66	✓	
Notes Payable - Peerless Explosives Co.			1,036,800.00	✓	
Notes Payable - Union Explosives Co.			871,750.00	✓	
In re: purchase of assets of Peerless Explosives Co. and Union Explosives Co.					

Prepared and approved by
Barrow, Wade, Guthrie & Co.
Examined and found correct

Approved

The Peerless-Union Explosives Corp., organized under the laws of Delaware, September 22, 1930

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Peerless-Union Explosives Corporation

Journal Entry Voucher

Date October 6, 1930

No. 002

	Debit	✓	Credit	✓	Folio
Cash	$ 959,558.25	✓			
Investments - Atlas Powder Co. Stock	1,212,641.75	✓			
Preferred Stock			$2,172,200.00	✓	

In re. issuance of 21,722 shares of Preferred Stock of Peerless-Union Explosives Corp. in exchange for $959,558.25 in cash and 6,318 shares of Preferred Stock and 8,712½ shares of Common Stock of Atlas Powder Co.

Cash

Common Stock - No Par Value

In re. [illegible] shares of Common Stock

Barrow, Wade, Guthrie & Co.

Form 7 [illegible]

Peerless-Union Explosives Corporation

Journal Entry Voucher

Date October 6, 1930 No. [illegible]

	Debit ✓	Credit ✓	Folio
Investments - Peerless, Black Diamond & Union	$1,844,791.75		
Cash		$ 632,150.00	
Investments - Atlas (6,318 Pfd. & 8,712½ Com.)		1,212,641.75	
Common Stock - 32,145.79 shares		-	

In re. acquiring the undernoted:

Peerless Explosives Co.

16,128 shs. Preferred Stock ($25.Par)

14,288 " Common Stock (No Par)

Black Diamond Powder Co.

1,584 shs. Common Stock

Union Explosives Co.

3,367½ shs. Preferred Stock ($100.Par)

4,044 " Common Stock (No Par)

Barrow, Wade, Guthrie & Co.

The Peerless-Union Explosives Co., organized under the laws of Delaware, September 22, 1930.

Form 7 500 10-30

Peerless-Union Explosives Corporation

Journal Entry Voucher

112

Date October 6, 1930 No. [illegible]

	Debit	✓	Credit	✓	Folio
Notes Payable - Union	$ 35,408.25	✓			✓
Suspension (J. Edgar Long)			$ 35,408.25	✓	

Debit balance of J. Edgar Long deducted in settlement October 7, 1930

Goodwill	3,250.00				
Investments-Peerless, Black Diamond & Union			3,250.00		

Excess investments cost over purchase price of assets of Peerless, Black Diamond & Union

Form 7 500 10-30

Peerless-Union Explosives Corporation

Journal Entry Voucher

Date October 24, 1930 No. 2005

	Debit	✓	Credit	✓	Folio
Cash	$ 7,000.00	✓			
Investments - Peerless, Black Diamond & Union			$ 7,000.00	✓	

Refund in re. cost of stock acquired

Prepared and checked by
Barrow, Wade, Guthrie & Co.
Examined and found correct for entry

Approved

The Peerless-Union Explosives Corp., organized under the laws of Delaware, September 22, 1930.

Form 1 883 10-30

Peerless-Union Explosives Corporation

Journal Entry Voucher

114

Date NOVEMBER 30, 1930 No. 11060

	Debit	✓	Credit	✓	Folio
NOTES PAYABLE UNION EXPLOSIVES CO.,	836,341.75 ✓				
INVESTMENTS- PEERLESS EXPLOSIVES CO., BLACK DIAMOND POWDER CO., AND UNION EXPLOSIVES COMPANY			836,341.75 ✓		

TO CANCEL NOTES PAYABLE OF UNION EXPLOSIVES COMPANY ON ACCOUNT OF DISOLUTION OF THAT COMPANY ON NOVEMBER 25, 1930.

Prepared and checked by

Examined and found correct for entry

Approved C. L. Pulleton

Form 7 500 10-30

Peerless-Union Explosives Corporation

Journal Entry Voucher

Date DECEMBER 31, 1930 No. 12074

	Debit	✓	Credit	✓	Folio
NOTES PAYABLE - PEERLESS EXPLOSIVES CO.	$1,036,800.00				
INVESTMENTS, PEERLESS, BLACK DIAMOND, AND UNION EXPLOSIVES COMPANY			$1,036,800.00		

CANCELLING NOTES PAYABLE TO PEERLESS EXPLOSIVES COMPANY. THE ENTIRE OUTSTANDING CAPITAL STOCK OF PEERLESS EXPLOSIVES CO. HAVING BEEN ACQUIRED BY PEERLESS-UNION EXPLOSIVES CORP. THE PEERLESS EXPLOSIVES CO. AND BLACK DIAMOND POWDER CO. HAVE BEEN DISSOLVED.

Prepared and checked by

Examined and found correct for entry

Approved C. B. Cullerton

Form 7 500 10-30

Peerless-Union Explosives Corporation

Journal Entry Voucher

116

Date DECEMBER 31, 1930 No. 12075

	Debit	✓	Credit	✓	Folio
INVESTMENTS - PEERLESS, BLACK DIAMOND AND UNION EXPLOSIVES COMPANY	$ 38,600.00	✓			
FIRST NATIONAL BANK, TAMAQUA, PA.			$ 38,600.00	✓	

TO CLOSE OUT ABOVE AMOUNT REPRESENTING DISBURSEMENT OF FUNDS ADVANCED TO FIRST NATIONAL BANK IN CONNECTION WITH PEERLESS EXPLOSIVES COMPANY STOCK. ALL STOCK HAVING BEEN, ACQUIRED AS OF DEC. 31, 1930

Prepared and checked by

Examined and found correct for entry

Approved C. E. Pulleston

NOT INVESTIGATED FIELD AUDIT

Form 1040
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

(Auditor's Stamp)

CLOSED
Date 11/12/31
A. Schultz
Unit 8
12/4/31

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1930

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1931

PRINT NAME AND ADDRESS PLAINLY BELOW

RAYMOND I. BASHFORD
(Name)

260 South Broad Street
(Street and number, or rural route)

Philadelphia (Post office) Philadelphia (County) Pa. (State)

Occupation Manufacturer

Net Wage

File Code 108

Serial Number 300859

District Penna

(Cashier's Stamp)
RECEIVED PAYMENT
BY CHECK
MAR 11 1931
J. D. MAC LAUGHLIN
PHILA. DIST. COLLECTOR INT. REV.

Cash Check P.O. Cert. of Ind.
First Payment
$

1. Are you a citizen or resident of the United States? Yes
2. If you filed a return for 1929, to what Collector's office was it sent? Scranton, Pa.
3. Is this a joint return of husband and wife? Yes
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent -
5. Were you married and living with husband or wife on the last day of your taxable year? Yes
6. If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you? -
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change No
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? 4

1930 33 94

Item and Instruction No.	INCOME	Amount received	Expenses paid (Explain in Schedule F)				
1.	Salaries, Wages, Commissions, etc. (State name and address of employer).						
	Pearless Explosives Co. Philadelphia, Pa.		$	$ 7	650	00	✓
	Black Diamond Powder Co. " "			1	350	00	✓
	Peerless-Union Explosives Corp. Phila., Pa.			3	000	00	✓
2.	Income from Business or Profession. (From Schedule A)						
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)				8	22	
4.	Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source						
5.	Income from Partnerships. (State name and address)						
6.	Income from Fiduciaries. (State name and address)						
7.	Rents and Royalties. (From Schedule B)						
8.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			25	693	13	
9.	Taxable Interest on Liberty Bonds, etc. (From Schedule E)						
10.	Dividends on Stock of Domestic Corporations			1	452	89	✓
11.	Other Income (including dividends on stock of foreign corporations). (State nature of income)						
	(a)						
	(b)						
12.	TOTAL INCOME IN ITEMS 1 TO 11					$ 39 154	24
	DEDUCTIONS						
13.	Interest Paid			$	147	12	
14.	Taxes Paid. (Explain in Schedule F)				126	83	✓
15.	Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)						
16.	Bad Debts. (Explain in Schedule F)						
17.	Contributions. (Explain in Schedule F)				64	00	
18.	Other Deductions Authorized by Law. (Explain in Schedule F)						
19.	TOTAL DEDUCTIONS IN ITEMS 13 TO 18					$ 357	95
20.	NET INCOME (Item 12 minus Item 19)					$ 38 816	29

C88 B3 3/1/33

36 1

18.	Other Deductions Authorized by Law. (Explain in Schedule F)				
19.	Total Deductions in Items 13 to 18			$ 557	25
20.	Net Income (Item 12 minus Item 19)			$ 38 816	29

EARNED INCOME CREDIT

21.	Earned Income (not over $30,000)		$ 12000	00
22.	Less Personal Exemption and Credit for Dependents		5100	00
23.	Balance (Item 21 minus 22)		$ 6900	00
24.	Amount taxable at 1½% (not over $4,000)		$ 4000	00
25.	Amount taxable at 3% (not over $4,000)		2900	00
26.	Amount taxable at 5% (balance over $8,000 of Item 23)			
27.	Normal Tax (1½% of Item 24)		$ 60	00
28.	Normal Tax (3% of Item 25)		87	00
29.	Normal Tax (5% of Item 26)			
30.	Surtax on Item 21		20	00
31.	Tax on Earned Net Income (total of Items 27 to 30)		$ 167	00
32.	Credit of 25% of Tax (not over 25% of Items 30, 44, 45, and 46)		$ 41	75

COMPUTATION OF TAX (See Instruction 22)

33.	Net Income (Item 20 above)			$ 38816	29
	LESS:				
34.	Liberty Bond Interest (Item 9)	$			
35.	Dividends (Item 10)	1452	89		
36.	Credit for Dependents	1600	00		
37.	Personal Exemption	3500	00		
38.	Total of Items 34 to 37			6552	89
39.	Balance (Item 33 minus 38)			$ 32263	40
40.	Amount taxable at 1½% (not over $4,000)			4000	00
41.	Balance (Item 39 minus 40)			$ 28263	40
42.	Amount taxable at 3% (not over $4,000)			4000	00
43.	Amount taxable at 5% (Item 41 minus 42)			$ 24263	40

44.	Normal Tax (1½% of Item 40)	$	60	00
45.	Normal Tax (3% of Item 42)		120	00
46.	Normal Tax (5% of Item 43)		1215	17
47.	Surtax on Item 20 (see Instruction 23)		1681	68
48.	Tax on Net Income (total of Items 44 to 47)	$	3074	85
49.	Tax on Capital Gain or Loss (12½% of Col. 8, Sched. D)			
50.	Total of or difference between Items 48 and 49	$	3074	85
51.	Less Credit of 25% of Tax on Earned Income (Item 32)		41	75
52.	Total Tax (Item 50 minus 51)	$	3033	10
53.	Less Income Tax Paid at Source			
54.	Income Tax paid to a foreign country or U. S. possession			
55.	Balance of Tax (Item 52 minus Items 53 and 54)	$	3033	10

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

(If return is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 9 day of March, 1931.

Raymond I Bassford
(Signature of individual or agent)

NOTARIAL SEAL

Harry Rosenblum Notary Public
(Signature of officer administering oath) My Commission Expires 3/30/33

(Address of agent)

An amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable at par.

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Total receipts from business or profession (state kind of business) _____ $ _____

Cost of Goods Sold

2. Labor _____ $ _____
3. Material and supplies _____
4. Merchandise bought for sale _____
5. Other costs (itemize below or on separate sheet) _____
6. Plus inventory at beginning of year _____
7. TOTAL (Lines 2 to 6) _____ $ _____
8. Less inventory at end of year _____
9. NET COST OF GOODS SOLD (Line 7 minus Line 8) _____ $ _____

Enter "C," or "C or M," on Lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

OTHER BUSINESS DEDUCTIONS

10. Salaries not included as "Labor," in Line 2. (Do not deduct compensation for your services) $ _____
11. Interest on business indebtedness to others _____
12. Taxes on business and business property _____
13. Losses (explain in table at foot of page) _____
14. Bad debts arising from sales or services _____
15. Depreciation, obsolescence, and depletion (explain in table provided at foot of page) _____
16. Rent, repairs, and other expenses (itemized below or on separate sheet) _____
17. TOTAL (Lines 10 to 16) _____ $ _____
18. TOTAL DEDUCTIONS (Line 9 plus Line 17) _____ $ _____
19. NET PROFIT (Line 1 minus Line 18) (Enter as Item 2) _____ $ _____

Explanation of deductions claimed on Lines 5 and 16 _____

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. KIND OF PROPERTY	2. AMOUNT RECEIVED	3. COST OR VALUE AS OF MARCH 1, 1913, WHICHEVER GREATER	4. DEPRECIATION (Explain in table at foot of page)	5. REPAIRS	6. OTHER EXPENSES (Itemize below)	7. NET PROFIT (Enter as Item 7)
	$	$	$	$	$	$
		NONE				

Explanation of deductions claimed in Column 6 _____

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. AMOUNT REALIZED	4. DEPRECIATION ALLOWABLE SINCE ACQUISITION	5. COST OR VALUE AS OF MARCH 1, 1913, WHICHEVER GREATER	6. SUBSEQUENT IMPROVEMENTS	7. NET PROFIT (Enter as Item 8)
		$	$	$	$	$
	SEE SEPARATE SCHEDULE					

State how property was acquired _____

SCHEDULE [illegible]—TAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 8a)

1. KIND OF	2. DATE ACQUIRED	3. DATE SOLD	4. AMOUNT REALIZED	5. DEPRECIATION ALLOWABLE SINCE ACQUISITION	6. COST OR VALUE AS OF MARCH 1, 1913, WHICHEVER GREATER	7. SUBSEQUENT IMPROVEMENTS, AND CAPITAL DEDUCTIONS	8. NET GAIN OR LOSS (Enter 12½% as Item 49)
	Mo. Day Year	Mo. Day Year	$	$	$	$	$

was acquired _____

SCHEDULE [illegible]—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

[illegible] OR SECURITIES	2. INTEREST RECEIVED OR ACCRUED	3. AMOUNT OWNED	4. PRINCIPAL AMOUNT EXEMPT FROM TAXATION	5. AMOUNT OWNED IN EXCESS OF EXEMPTION	6. INTEREST ON AMOUNT IN EXCESS OF EXEMPTION (Enter as Item 9)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All	XXXXXX	XXXXXX
(b) Securities issued under Federal Farm Loan Act, Treasury Bills, and Certificates of Indebtedness issued after June 17, 1929			All	XXXXXX	XXXXXX
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. possessions			All	XXXXXX	XXXXXX
(d) Liberty 4% and 4¼% Bonds, Certificates of Indebtedness issued before June 18, 1929, Treasury Bonds and Savings Certificates			$5,000	$	$
			None		
(e) Treasury Notes					

before June 15, 1929, Treasury Bonds and Savings Certificates					$5,000	$		$
(c) Treasury Notes					None			

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18

Contributions:

Wilkes Barre Y.M.C.A.	$10.00
Wyoming Valley Community Fund	25.00
" " Tubercular Society	1.00
Elks Charity Fund	1.00
American Legion	2.00
Mayor's Relief Fund, Phila.	10.00
Church	15.00
	$64.00

Taxes:

Personal Property, Penna.	$ 16.03
Penna. Auto Taxes	26.80
Gasoline Tax, Penna.	84.00
	$126.83

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquirement	5. Cost or Value as of March 1, 1913, Whichever Greater (Exclusive of Land)	Amount of Depreciation Charged Off	
					6. Previous years	7. This year
				$	$	$

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 15

1. Kind of Property	2. Date Acquired	3. Cost or Value as of March 1, 1913, Whichever Greater	4. Subsequent Improvements	5. Depreciation Allowable Since Acquisition	6. Insurance and Salvage Value	7. Deductible Loss
		$	$	$	$	$

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 6156—October Term, 1936

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

RAYMOND I. BASHFORD, RESPONDENT

Appeal from the Board of Tax Appeals

And now, to-wit: this 10th day of November A. D. 1936, it is ordered that Hon. Albert B. Maris, District Judge for the Eastern District of Pennsylvania, is hereby assigned to sit in above case in order to make a full court.

JOSEPH BUFFINGTON,
Circuit Judge.

(Endorsements:) Order Assigning Hon. Albert B. Maris for Argument. Received & Filed Nov. 10, 1936. Wm. P. Rowland, Clerk.

United States Circuit Court of Appeals for the Third Circuit

No. 6156—October Term, 1936

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

RAYMOND I. BASHFORD, RESPONDENT

And afterwards, to wit, the 10th day of November, 1936, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington and Honorable J. Whitaker Thompson, Circuit Judges, and Honorable Albert B. Maris, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 22d day of January, 1937, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

United States Circuit Court of Appeals for the Third Circuit

No. 6156—October Term, 1936

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

RAYMOND I. BASHFORD, RESPONDENT

On Petition for Review of Decision of the United States Board of Tax Appeals

Opinion

(Filed January 22, 1937)

Before BUFFINGTON and THOMPSON, Circuit Judges, and MARIS, District Judge

MARIS, District Judge: This is a petition to review a decision of the United States Board of Tax Appeals. The facts involved are fully set forth in the opinion of the Board. They may be briefly summarized as follows:

Prior to October 7, 1930 Peerless Explosives Company, Union Explosives Company and its wholly owned subsidiary, Black Diamond Powder Company, were corporations engaged in the manufacture and sale of high explosives in competition with Atlas Powder Company. They were also customers of Atlas. This situation was not satisfactory to Atlas which desired to remove the possible dangerous competition and to acquire for itself the business of these competitors. Early in 1930 the president of Atlas conceived the idea of reorganizing these three companies and consolidating or merging them into a new company which would be controlled by Atlas. In order that the identity of Atlas in the transaction should not be known at the beginning of the negotiations the business was entrusted to H. K. Seligman and W. E. Fletcher as its agents to negotiate with the stockholders of Peerless and Union. They were instructed that Atlas did not desire to purchase either the assets or stocks of Peerless, Union, or Black Diamond, but to reorganize them by the exchange of stocks, into a new company to be controlled by Atlas.

The preliminary negotiations with the majority stockholders of Peerless and Union were conducted by Atlas through its agents, Seligman and Fletcher, without disclosing its identity, until it had secured from said stockholders their oral assurances that they would exchange their stock on the plan proposed. It was made plain from the beginning, however, that a strong financial interest was represented and would participate in the plan by furnishing necessary funds.

The main features of the plan were that Peerless, Union, and Black Diamond were to be consolidated into a new company, Peerless-Union Explosives Corporation, that the stockholders of the old companies would receive for their stock in the old companies stock in the new company, stock in Atlas and some cash. Atlas on its part was to furnish the new company with sufficient cash and sufficient shares of its own common and preferred stock to complete the transaction. In return it was to receive sufficient common and preferred stock in the new company to assure its control.

On October 2, 1930, the board of directors of Atlas approved the proposed plan of reorganization and the action of its executive officers in causing the new company to be formed, and authorized the purchase of all of the preferred stock and a majority of the common stock of the new company for cash and shares of its own preferred and common stock to the amount required to carry out the plan. Thereafter the majority stockholders of Peerless and Union entered into written agreements with Seligman and Fletcher to deliver their shares of stock in Peerless and Union for cash, shares of common stock in the new company, and shares of stock in Atlas to the extent provided for in the plan. Seligman and Fletcher also secured options on practically all of the minority stockholdings in Peerless and Union and on October 7, 1930, the transfers and exchanges were made pursuant to the agreements and plan of reorganization. The assets of the three old corporations, Peerless, Union, and Black Diamond, were transferred to the new company and the old companies were dissolved. At the consummation of the plan the new company was the owner of all the stock and practically all the assets of the old companies and Atlas was the owner of all the preferred stock and over 57% of the common stock of the new company formed by the reorganization.

The respondent was one of the majority stockholders of Peerless. He exchanged his stock in that company for cash, stock in the new company, and stock in Atlas pursuant to the plan of reorganization. His income tax return for the year 1930 was prepared upon the theory that there had been a statutory reorganization effected between the three old companies and the new company and that Atlas was a party to the reorganization. He, therefore, reported no gain as a result of the receipt of the stock of the new company and of Atlas. The petitioner, however, took the position that Atlas was not a party to the reorganization and assessed a tax deficiency against the respondent upon the theory that the Atlas stock he received was "other property" received in a statutory reorganization within the meaning of Section 112 (c) of the Revenue Act of 1928, 45 Stat. 791. Before the Board of Tax Appeals the petitioner changed his position, claiming that by none of the exchanges was a statutory reorganization effected but that the entire transaction constituted a sale and that taxable gain was realized by the respondent upon both the stock of the new company and the stock of Atlas which he received. The Board sustained the contention of the respondent, holding that there had been a statutory

reorganization effected between the three old companies and the new company and that the Atlas was a party thereto. The petitioner thereupon filed his petition to review the decision of the Board.

In this court the petitioner concedes that a statutory reorganization did take place between the three old companies and the new company, but strongly urges that Atlas was not a party to that reorganization. Therefore, he argues, the respondent is taxable upon the gain realized by him upon the receipt of the stock of Atlas which was delivered to him in the transaction.

Section 112 of the Revenue Act of 1928, 45 Stat. 791, provides in part as follows:

"Sec. 112. Recognition of Gain or Loss:

"(a) General rule.—Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 111, shall be recognized, except as hereinafter provided in this section.

"Exchanges solely in kind.—

* * * * * * *

"(3) Stock for stock on reorganization.—No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

* * * * * * *

"(c) Gain from exchanges not solely in kind.—(1) If an exchange would be within the provisions of subsection (b) (1), (2), (3), or (5) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

* * * * * * *

"(i) Definition of reorganization.—As used in this section and sections 113 and 115—

"(1) The term 'reorganization' means (A) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation), or (B) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (C) a recapitalization, or (D) a mere change in identity, form, or place of organization, however effected.

"(2) The term 'a party to a reorganization' includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the

voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

"(j) Definition of control.—As used in this section, the term 'control' means the ownership of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of the corporation."

Since, as we have seen under the plan of reorganization which was carried through in this case, the new company became the owner of all the assets and practically all the stock of the old companies, there was a merger or consolidation and, therefore, a reorganization within the definition contained in section 112 (i) (1) (A) of the statute. The question presented to us for consideration is whether Atlas was a party to that reorganization. Considering this question we note that the statute defines the term "party to a reorganization" to include both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and of least a majority of the total number of shares of all other classes of stock of another corporation. We also observe that the reorganization in this case contemplated and involved not only the acquisition by the new company of a majority of the stock of all classes of the old companies, but also the acquisition by Atlas of a majority of the stock of all classes of the new company itself. It, therefore, appears that Atlas was a party to the reorganization within the literal terms of the statutory definition.

But even if this were not so we are satisfied that Atlas was a party to the reorganization within the meaning of the statute. The definition contained in the statute is, as this court pointed out in Commissioner of Internal Revenue v. Fifth Avenue Bank of New York, 84 F. (2d) 787, not an all inclusive one but, as the petitioner stated in his interpretative regulations (Article 577, Regs. 74) it "simply enumerates certain cases with respect to which doubt might arise." It seems to us that this fact was overlooked by the Circuit Court of Appeals for the Seventh Circuit in Commissioner of Internal Revenue v. Groman, decided November 30, 1936. Consequently we cannot follow the reasoning of that case, but are constrained to hold that one who is a party to a reorganization transaction as that language is commonly understood is a party within the meaning of the statute.

The Board in its opinion found as a fact upon sufficient evidence: "that the entire idea and plan of reorganization, was conceived by Atlas; that it was in the line of Atlas' business; and that its promotion and execution were entrusted to its agents, Seligman and Fletcher under general instructions. The plan was developed and formed by Atlas and its agents; cash and its own stock necessary to the accomplishment of the transaction were furnished by Atlas; and it became the owner of the majority of the voting stock and of all of the preferred stock of the new company. In short, Atlas was the mainspring of the entire proceeding and without its participation

there would have been no reorganization and consolidation into the new company."

The administrative findings of fact of the Board based upon evidence are conclusive upon this court. Beech v. Commissioner of Internal Revenue, 82 F. (2d) 42; Phillips v. Commissioner, 283 U. S. 589. Upon these findings we fully agree with the Board that a corporation so intimately connected with the reorganization of the other corporation as was Atlas in this case is a party to the reorganization within the commonly understood meaning of that phrase, although not reorganized itself. Commissioner of Internal Revenue v. Fifth Avenue Bank of New York, supra.

The petitioner vigorously urges that a contrary conclusion is compelled by the opinion of this court in Bus & Transport S. Corp. v. Commissioner of Internal Revenue, 79 F. (2d) 509. That case is, however, clearly distinguishable on its facts and is not in any way determinative of the question here involved. As the Supreme Court said, when that case was brought before it (Bus & Trans. Corp. v. Helvering, 296 U. S. 391) "the transactions there involved did not even remotely resemble a merger or reorganization as commonly understood." In the case now before us, however, the petitioner concedes that a reorganization did take place.

The order of the Board of Tax Appeals is affirmed.

A true copy.

Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

United States Circuit Court of Appeals for the Third Circuit

No. 6156.—October Term, 1936

Commissioner of Internal Revenue, petitioner

vs.

Raymond I. Bashford, respondent

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the order or decree of the said Board of Tax Appeals in this cause be, and the same is hereby affirmed.

Philadelphia, January 22, 1937.

J. W. Thompson,
Circuit Judge.

(Endorsements:) Order affirming decree. Received & filed Jan. 22, 1937. Wm. P. Rowland, clerk.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, Set:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Transcript of Record and proceedings in this Court in the case of Commissioner of Internal Revenue, petitioner, vs. Raymond I. Bashford, respondent, No. 6156, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court at Philadelphia, this 15th day of April in the year of our Lord one thousand nine hundred and thirty-seven and of the independence of the United States the one hundred and sixty-first.

[SEAL]

WM. P. ROWLAND,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1937

Supreme Court of the United States

Order allowing certiorari

Filed May 24, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is assigned for argument immediately following No. 854.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.